

No. 11713

United States
Circuit Court of Appeals
For the Ninth Circuit

FREDERICK JOHN WOLFE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

WILLIAM GALBALLY, JR., ESQ.

JAMES H. HAYES, ESQ.

JAMES O. WYNN, ESQ.

HENRY B. BURR, ESQ.

For Commissioner:

SHELDON ECKMAN, ESQ.

The Tax Court of the United States
Docket No. 7287

FREDERICK JOHN WOLFE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1945

- Mar. 5 Petition received and filed. Taxpayer notified. Fee paid.
- Mar. 5 Request for Circuit hearing in Los Angeles, Calif., filed by taxpayer. 3/15/45, granted.
- Mar. 6 Copy of petition served on General Counsel.
- Apr. 17 Answer filed by General Counsel.
- Apr. 18 Copy of answer served on taxpayer—Los Angeles, Calif.
- Nov. 1 Notice of appearance of James O. Wynn as counsel filed.
- Nov. 1 Motion to change place of hearing from Los Angeles to New York City filed by taxpayer. 11/2/45 granted.

1946

- Aug. 6 Hearing set Oct. 7, 1946, at New York City.

1946

- Oct. 7 Hearing had before Judge Disney on the merits. Partial stipulation of facts filed. Appearances of James H. Hayes, Esq., and Henry B. Burr, Esq., as counsel filed. Petitioner's brief due 11/7/46—respondent's 12/1/46—petitioner's reply 12/15/46.
- Oct. 29 Transcript of hearing of 10/7/46 filed.
- Nov. 7 Brief filed by taxpayer. Copy served.
- Nov. 27 Brief filed by General Counsel.
- Dec. 13 Motion for extension to December 23, 1946, to file reply brief, filed by taxpayer. 12/13/46 granted.
- Dec. 30 Motion for leave to file the attached printed reply brief filed by taxpayer. 12/31/46 granted.
- Dec. 31 Reply brief filed by taxpayer. 1/2/47 copy served.

1947

- Mar. 31 Findings of fact and opinion rendered, Disney J. Decision will be entered for the respondent. 4/1/47 copy served.
- Apr. 1 Decision entered, Disney J., Div. 4.
- June 25 Bond in the amount of \$3,000.00 approved and ordered filed.
- June 25 Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, filed by taxpayer.
- June 25 Proof of service filed by taxpayer. [1*]
- July 31 Statement of points filed by taxpayer with proof of service thereon.

* Page numbering appearing at top of page of original certified Transcript.

1947

- July 31 Designation of portions of record filed by taxpayer with proof of service thereon.
- Aug. 11 Statement of evidence filed.
- Aug. 11 Certified copy of order from 9th Circuit extending time for filing and docketing the appeal to September 15, 1947, filed. [2]
-

[Title of Tax Court and Cause.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PAK) dated December 11, 1944, and as a basis of this proceeding alleges as follows:

1. Petitioner is an individual residing at 1155 Oak Grove Avenue, San Marino, California. His income tax return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.
2. The notice of deficiency (a copy of which is attached hereto, marked "Exhibit A" and made a part hereof) was mailed to the petitioner on December 11, 1944.
3. The tax in controversy is income tax for the calendar year 1941 in the amount of \$1,101.49.
4. The determination of tax set forth in said notice of deficiency is based upon the following error:

(a) The respondent erred in adding to petitioner's net taxable income for the year 1941 the sum of \$5,780.67. [3]

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner is a resident of the County of Los Angeles, State of California, and as such filed his income tax return for the year here involved with the Collector of Internal Revenue for the Six Collector District of California.

(b) The petitioner, an individual, is a Canadian citizen and became a resident of the United States on or about October 4, 1941. He entered this country under the authority of an immigration visa intending to become a resident. Prior to coming to the United States and during the period 1931 to 1941, petitioner was a resident of the United Kingdom, living at London, England.

(c) During 1931 the petitioner became Chairman and Managing Director of the Anglo-American Oil Company, Limited, an English company. During 1931 it was agreed by and between petitioner and his employer, Anglo-American Oil Company, Limited, that upon his retirement from the company's employment he would be given an annuity computed in accordance with the provisions of the company's superannuation plan in effect at the date of petitioner's retirement; it being understood by and between petitioner and his employer that he was not eligible to participate in the superannuation plan of Anglo-American Oil Company, Limited, as

such plan was not applicable to any person who entered the employ of the Anglo-American Oil Company, Limited, subsequent to May 18, 1928.

(d) On March 22, 1940, the Anglo-American Oil Company, Limited, the Standard Oil Company of New Jersey and petitioner entered into an agreement whereunder in recognition of taxpayer's valuable services to it, Anglo-American Oil Company, Limited, agreed to pay to Standard Oil Company of New Jersey the capital sum of eighty-nine [4] thousand one hundred and twenty pounds sterling (£89,120-0-0), or the equivalent in United States currency of four hundred and fifteen thousand, seven hundred and eighty-six 75/100 dollars (\$415,786.75) and Standard Oil Company of New Jersey agreed to pay petitioner a life annuity of three thousand and thirty-eight and 75/100 dollars (\$3,038.75) per month and to pay the same annuity to petitioner's wife, Marguerite B. Wolfe, for one year should she survive petitioner.

Said contract between the petitioner, said Anglo-American Oil Company, Limited, and said Standard Oil Company of New Jersey was an agreement to make periodical payments to the petitioner and, after the death of the petitioner, to his wife. The making and continuance of all of the series of such payments was dependent upon the continuance of human life, to wit, the life of the petitioner, and after the petitioner's death, the life of his wife. Such agreement was not insurance upon the life or lives of a human being or of human beings and was not insurance appertaining thereto. Said agreement was an annuity contract.

(e) Pursuant to said contract of March 22, 1940, Anglo-American Oil Company, Limited, paid to Standard Oil Company of New Jersey the capital sum of eighty-nine thousand one hundred and twenty pounds sterling (£89,120-0-0) for petitioner's annuity. Said amount was the aggregate premium and consideration paid for said annuity.

(f) Petitioner retired from his employment with Anglo-American Oil Company, Limited, on or about July 1, 1940.

(g) Standard Oil Company of New Jersey has regularly paid to petitioner or his order each month from the date of his retirement to the present time, pursuant to the contract of March 22, 1940, the sum of three thousand [5] and thirty-eight and 75/100 dollars (\$3,038.75). The amount so received by the petitioner intermediate October 4, 1941, and December 31, 1941, was five thousand seven hundred eighty dollars sixty-seven cents (\$5,780.67).

(h) Prior to October 4, 1941, petitioner was a non-resident alien and as such no part of the amounts received by him prior to October 4, 1941, were included in his gross income for the purposes of determining net taxable income.

(i) There has been no transfer of the agreement described in paragraph 5 (d) herein.

(j) The deficiency from the determination of which this appeal is taken, is based upon a computation of the petitioner's taxable net income for the calendar year 1941 in which computation no part of the said annuity has been excluded from the petitioner's gross income.

Wherefore, petitioner prays that the Tax Court of the United States may hear this petition and determine that the respondent erred as alleged in paragraph 4 hereof and redetermine the aforesaid deficiency in accordance with the rights of petitioner in the premises and grant any and all refunds that may be due as a result of such redetermination.

Dated this 3rd day of March, 1945.

/s/ WILLIAM GALBALLY, JR.,
Counsel for Petitioner.

Of Counsel:

JAMES O. WYNN. [6]

State of California,
County of Los Angeles—ss.

Frederick John Wolfe, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition or had the same read to him and is familiar with the statements contained therein and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

/s/ FREDERICK JOHN WOLFE.

Subscribed and sworn to before me this 3rd day of March, 1945.

/s/ FLORENCE E. SCALLON,
Notary Public.

My Commission Expires Feb. 27, 1946. [7]

EXHIBIT A

[Letterhead Treasury Department]

December 11, 1944.

Office of Internal Revenue Agent in Charge Los Angeles Division, LA:IT:90D:PAK.

Mr. Frederick John Wolfe
1155 Oak Grove Avenue
San Marino, California

Dear Mr. Wolfe:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1941, discloses a deficiency of \$1,101.49, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the

closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

PAK:vmc

Enclosures:

Statement

Form of waiver [8]

STATEMENT

Tax Liability for the Taxable Year Ended December 31, 1941

	Liability	Assessed	Deficiency
Income Tax.....	\$1,431.56	\$330.07	\$1,101.49

In making this determination of your income tax liability careful consideration has been given to the report of examination dated January 5, 1944, to your protest dated March 31, 1944 and to the statements made at conferences held on April 24 and October 24, 1944.

A copy of this letter and statement has been mailed to your representative, Mr. William Galbally, Jr., 510 South Spring Street, Los Angeles 13, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustment to Net Income

Net income as disclosed by return.....	\$3,589.14
Additional income:	
(a) Income excluded from return.....	5,780.67
Net income adjusted.....	\$9,369.81

Explanation of Adjustment

(a) It is determined that the entire amount received by you from the Standard Oil Company of New Jersey during your residence in the United States constitutes gross income under the provisions of section 22, of the Internal Revenue Code. Accordingly, income from that source has been increased from \$3,041.51 reported by you to \$8,822.18.

Due to the increase in taxable income as shown herein the credit for income taxes paid to the Dominion of Canada has been increased from \$64.52 claimed in your return to \$95.60 the amount allowable under section 131(b) of the Internal Revenue Code.

Computation of Tax

Net Income Adjusted.....	\$9,369.81
Less: Personal exemption claimed by wife.....	
Balance (surtax net income).....	\$9,369.81
Less: Earned income credit (10% of \$8,8822.18).....	882.22
Net income subject to normal tax.....	\$8,487.59
Normal tax at 4% on \$8,487.59.....	\$ 339.50
Surtax on 9,369.81.....	1,187.66
Total normal tax and surtax.....	\$1,527.16
Total income tax.....	1,527.16
Less: Income tax paid to a foreign country.....	95.60
Correct income tax liability.....	\$1,431.56
Income tax assessed:	
Original, account No. 951809.....	330.07
Deficiency of income tax.....	\$1,101.49

[Endorsed]: Received and filed March 5, 1945.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

- 1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.
3. Admits that the tax in controversy is income tax for the calendar year 1941; denies the remaining allegations contained in paragraph 3 of the petition.

4. Denies the allegations of error contained in subparagraph (a) of paragraph 4 of the petition.

5. Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

(c) Admits that during 1931 the petitioner became chairman and managing director of the Anglo-American Oil Company, Limited, an English company; denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d) and (e) Denies the Allegations contained in subparagraphs (d) and (e) of paragraph 5 of the petition.

(f) Denies for lack of information upon the basis of which to form a belief as to the truth or correctness thereof, the allegations contained in subparagraph (f) of paragraph 5 of the petition.

(g) Admits only, and no more of subparagraph (g) of paragraph 5 of the petition, than that the petitioner during the year 1941 received from the Standard Oil Company of New Jersey regularly each month the sum of \$3,038.75.

(h) Admits that prior to October 4, 1941, petitioner was a non-resident alien; denies the remaining allegations contained in subparagraph (h) of paragraph 5 of the petition.

(i) Denies for lack of information upon the basis of which to form a belief as to the truth or correctness thereof, the allegations contained in subparagraph (i) of paragraph 5 of the petition.

(j) Admits the allegations contained in subparagraph (j) of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied. [12]

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
ECC

Chief Counsel, Bureau of Internal
Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,
B. M. COON,

Special Attorneys, Bureau of
Internal Revenue.

BMC:ec 4/9/45.

[Endorsed]: Received and filed April 17, 1945.

The Tax Court of the United States
FREDERICK JOHN WOLFE,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 7287. Promulgated March 31, 1947.

The petitioner was for 28 years employed by subsidiaries of Standard Oil Co. of New Jersey, includ-

ing Anglo, and for 10 years prior thereto by a company absorbed by a subsidiary of Standard. Anglo in 1940 paid Standard about \$415,000 and Standard agreed in writing to pay, and thereafter, including the taxable year 1941 did pay the petitioner upon retirement \$36,465 per year, based upon 38 years' service. Correspondence and the contract referred to the \$415,000 as a contribution by Anglo. The payments were referred to variously as "annuity" or "pension." The petitioner in 1940 was a nonresident alien, being a Canadian residing in England. In 1941 he was a resident of the United States. Held, the payment to petitioner in 1941 was not an annuity, within section 22 (b) (2) of the Internal Revenue Code, and the \$415,000 was not taxable to him in 1940, and the payment in 1941 was all taxable income under section 22 (a) of the Internal Revenue Code.

James O. Wynn, Esq., William Galbally, Jr., Esq., James H. Hayes, Esq., and Henry B. Burr, Esq., for the petitioner.

Sheldon V. Ekmann, Esq., for the respondent.

This case involves income tax for the year 1941. Deficiency was determined in the amount of \$1,101.49, all of which is contested. The only issue presented is whether the monthly payments received by petitioner from the Standard Oil Co. (New Jersey) are taxable to him in full as ordinary income or whether they are taxable as an annuity under section 22 (b) (2) of the Internal Revenue Code.

A stipulation of facts was filed. We adopt same by reference and find the facts therein set forth. Such parts thereof as it is considered necessary to set forth are included with other facts found from evidence adduced in our findings of fact.

Findings of Fact

Petitioner is an individual and filed an income tax return for the year 1941 with the collector of Internal revenue for the sixth district of California. Petitioner is a citizen of Canada. From his birth in [14] 1879 to 1931 he was a resident of Canada, and from 1931 to October 4, 1941, prior to coming to the United States, he was a resident of England.

In 1902 petitioner entered the employ of the Queen City Oil Co., Ltd., a Canadian corporation, which company in 1911 or 1912 was absorbed by the Imperial Oil Co., Ltd. (hereinafter referred to as Imperial), a Canadian corporation. Petitioner continued in the employ of Imperial until March 1, 1931. The stock of Imperial was largely held by the Standard Oil Co. of New Jersey (hereinafter referred to as Standard).

Two or three months prior to March 1, 1931, petitioner was requested by the senior vice president of Imperial to go to England and take over the duties of the managing director of the Anglo-American Oil Co., Ltd. (hereinafter referred to as Anglo), an English corporation. On March 1, 1931, petitioner became managing director, and later in 1931, chairman, of the board of Anglo. Anglo was stock con-

trolled by the Standard Oil Export Corporation, which, in turn, was stock controlled by Standard.

Prior to March 1, 1931, petitioner had conversations with officers of both Standard and Standard Oil Export Corporation to obtain knowledge of the background of Anglo. The amount of salary that he was to receive from Anglo was discussed between petitioner and the senior vice president of Imperial. It was the understanding when the petitioner undertook the assignment of chairman and managing director of Anglo, at the request of Standard, that if he was eventually retired from the service of Anglo he would receive a life annuity based on the provisions of the superannuation scheme of Anglo in effect on the date of retirement and that payment of such pension in sterling would be guaranteed by Standard in dollars at an exchange rate of \$5 to the pound. Before petitioner went to England he knew that Anglo had a scheme or plan in existence for paying its retired employees. Petitioner did not know much about the actual details at that time, but he knew that the basis of the plan was as follows: An employee was entitled on retirement to roughly 2 per cent per year of service, based on a maximum of 75 per cent, and the average of the last 5 years' pay. Retirement at 60 for one who had the full $37\frac{1}{2}$ years of service would be about 66.3 per cent.

After petitioner went to England, and prior to October 22, 1931, he discussed with the executives of Anglo the question of payments to be made to him in the event of his retirement from the services of that company. Petitioner told them very "plainly"

that he wanted to be considered on the same basis as those who were under the superannuation plan. On August 20, 1931, J. W. Myers, then secretary of [15] Standard's committee on annuities and benefits, wrote D. L. Harper, in charge of foreign sales for Standard, as follows:

Mr. D. L. Harper,
Building.

Dear Mr. Harper:

In reply to your letter of August 14th, regarding Mr. F. J. Wolfe's service record, this will confirm our conference with Mr. Wolfe the other day to the effect that this question is to be deferred until the Anglo American Oil Company has revised its Annuity Plan. This decision is based on the probability that any such Plan will fully take care of Mr. Wolfe's case. Of course, if it does not, the matter will have to be given special consideration at the proper time.

Very truly yours,
/s/ J. W. MYERS,
Secretary.

JWM:G

(Notation) 11/29/33

Anglo is to adopt service credit rules basically the same as those of S. O. Co. (N. J.), with such additions as will care for employees of their own subs. Follow this point when plan is in final shape.

After some discussion, it was decided that petitioner was to be treated as if he had been in the employ of Anglo from the date in June, 1902, when he was first employed by the Queen City Oil Co., Ltd. This board of directors of Anglo passed a resolution to that effect on October 22, 1931, which reads as follows:

Resolved, it being part of the arrangement with Mr. Wolfe on his joining the Board of this Company, and becoming Managing Director, that for the purpose of calculating pension payable by this Company to him, his services shall be deemed to commence from June, 1902, on which date he joined the Queen City Oil Co., Ltd., (which was subsequently absorbed by the Imperial Co., Ltd., of Canada) and that he be entitled to pension on the same basis as employees benefiting under the Company's Super-annuation Scheme dated 31st December, 1925, or any subsequent modification thereof.

In 1939 petitioner informed Anglo that he wished to retire and live in the United States and that he wished his "annuity" to be paid in United States dollars at \$5 to the pound. Discussions were had with officials of Anglo and of Standard to this end. Various procedures for paying petitioner were discussed by Standard, Anglo, and petitioner. Among them was a proposal to purchase an annuity for petitioner from a commercial insurance company. This proposal was never accepted or put into effect.

Under date of June 21, 1939, one of the staff on Standard's committee on annuities and benefits furnished to F. W. Pierce, executive assistant to the president of Standard, a memorandum, in pertinent part, expressing doubt whether a purchase of such a large amount could be made from an insurance company, and that Equitable had indicated that they would, if asked to write such a contract, have to think it over; also enclosing a table showing "approximate capital [16] value of Mr. Wolfe's annuity," assuming retirement at July 1, 1940, to have a "total cost" of \$467,165, for an annuity of \$34,131 (based on exchanges at \$4.68 on June 20, 1939).

Under date of June 29, 1939, F. W. Pierce wrote T. C. McCobb, a member of the board of directors of Standard, on the subject "Retirement of F. J. Wolfe," stating, in part, as follows:

We understand that under the agreement with Mr. Wolfe, he is to receive, upon retirement, a life annuity calculated in accordance with the Anglo Plan and their discount absorption program (the latter being identical to ours), the annuity to be payable in the United States in dollars converted at the rate of \$5.00 to the pound. * * *

The procedure which is to be followed in respect of payment and transfer of funds has been discussed with Mr. Wolfe and we find that it presents some problems. However, subject to proper approval, it is proposed that the annuity be paid by New York in dollars, converted at the

rate of \$5.00 to the pound. In view of the uncertainties of the future and in order to assure that the necessary funds be available here when needed, it is further proposed that Anglo transfer to S. O. Co. of N. J. for deposit to the sub-account for assigned expatriates in the Annuity Fund the estimated present value of Anglo's liability, assuming retirement as of January 1, 1940, computed on a 3% interest basis and discounted for mortality but not for labor turnover due to any other cause. This transfer would be dollars at the rate of exchange prevailing at the time of payment. If retirement occurs at a later date, Anglo would make the necessary additional capital contribution. In the event of Mr. Wolfe's death prior to retirement, the capital contribution plus 3% interest, compounded annually, would be returned to Anglo unless the pension had meanwhile been insured in which event, the premium refund, if any, would be determined in accordance with the provisions of the insurance contract under which it was purchased. Any cost incurred in New York by reason of a sterling rate less than \$5.00 would be absorbed by Jersey and charged to such account as may be later determined. The Anglo sterling pension capital contribution would possibly not be a deductible item for income tax purposes so far as concerns Anglo.

A table set forth in the letter showed the "annual annuity" assumed effective July 1, 1940, to be \$36,465 (dollars at \$5 per pound) and \$34,131 (dollars at \$4.68).

Under date of August 4, 1939, R. A. Carder, an official and secretary of Anglo, in charge of finances, wrote Frank Pierce, "Annuities & Benefits Dept.," a letter, stating in part, as follows:

* * * the procedure [retirement of F. J. Wolfe] proposed entails obligations on all three parties affected and is of considerable importance, it seems to us that by far the best method of dealing with the matter is to embody the arrangement in a simple three-party agreement.

Pencil notations appear at the bottom of the letter as follows:

£87,177 at 4.68—408,988; at 5.00—435,885.
Group Annuity * * *, our estimated cost at 3%
—491,000. Without loading 451,000.

A letter from an official of Standard to R. A. Carder, an official of Anglo, under date of January 9, 1940, indicated that final arrangements had been made, satisfactory to petitioner, so that his retirement would [17] become effective July 1, 1940. The letter contained, in part, the following:

Final arrangements have been made, satisfactory to Mr. Wolfe, so that his retirement will become effective July 1, 1940. Although our formal setup for taking care of the annuity is not completed, we have undertaken to guarantee Mr.

Wolfe that the money which you have provided, plus the additional amounts which Standard Oil Co. of New Jersey will be required to put up, will be used to assure him the annuity to which he is entitled, and there is no reason, therefore, why you should not formally record the transaction.

It was ultimately decided to handle the matter by having Anglo transfer to Standard the present value of Anglo's pension liability to petitioner and having Standard pay petitioner monthly in dollars. During the time petitioner was employed by Anglo his salary was £11,000 per year, and the salary did not vary in the last five years of his service.

On March 22, 1940, T. W. Pierce wrote R. A. Carder, enclosing three copies of "an agreement of annuity." Reference was made to "Anglo's initial contribution." The agreement under date of March 22, 1940, referred to in the letter of March 22, 1940, and drawn by an official of Standard, entered into between Anglo, Standard and petitioner, reads in pertinent part as follows:

Whereas, Mr. Wolfe is Chairman and Managing Director of the Anglo Company and on March 1, 1931, undertook this assignment at the request of the Standard Company on the understanding that if he were eventually retired from the service of the Anglo Company he would receive a life annuity based on the provisions of the superannuation scheme of the Anglo Company as in effect on the date of retirement and

that payment of such sterling pension would be guaranteed by the Standard Company in dollars at an exchange rate of five dollars to the pound.

And Whereas, Mr. Wolfe is to be retired from the service of the Anglo Company on the first day of July, 1940.

And Whereas, the Anglo Company is unable to grant formally an annuity to Mr. Wolfe under its own superannuation scheme or pay same from its superannuation fund for the reason that such scheme and related fund are not applicable to any person who entered the employ of the Anglo Company subsequent to May 18, 1928.

And Whereas, the Anglo Company desires to recognize Mr. Wolfe's valuable services to the Anglo Company by contributing to the Standard Company a capital sum of £89,120-0-0 representing the liability which it would have incurred had it granted Mr. Wolfe a sterling pension equivalent to that payable under the superannuation scheme of the Anglo Company.

And Whereas, the Standard Company has agreed to accept the aforesaid £89,120-0-0 from the Anglo Company and to pay Mr. Wolfe a life annuity as hereinafter provided.

Now It Is Hereby Witnessed as follows:

1. That in consideration of the aforesaid understanding with Mr. Wolfe the Standard Company hereby covenants to pay Mr. Wolfe a life annuity of \$3,038.75 per month, effective July 1, 1940, with the understanding that should Mr.

Wolfe's present wife, Marguerite W. Wolfe, survive him, monthly payments in the [18] amount of \$3,038.75 each will be continued and paid to her for a period not to exceed twelve months and in no case beyond the date of her death.

2. Mr. Wolfe hereby accepts this annuity settlement as a complete discharge of any and all pension obligations of the Standard Company, the Anglo Company and any other associated companies.

3. In consideration of Mr. Wolfe's valuable services to the Anglo Company, the Anglo Company has paid to the Standard Company, as a contribution toward the cost of the annuity settlement, the sum of £89,120-0-0, the receipt of which sum the Standard Company doth hereby acknowledge.

4. In consideration of the aforesaid payment the Standard Company hereby indemnifies and for all time agrees to keep indemnified the Anglo Company from and against any liability which the Anglo Company might otherwise have had to Mr. Wolfe in respect to a pension.

5. If Mr. Wolfe shall die prior to July 1, 1940, then the Standard Company will forthwith on the death of Mr. Wolfe being proved to their reasonable satisfaction repay to the Anglo Company the £89,120-0-0 paid to the Standard Company by the Anglo Company under clause 3. hereof with interest thereon at

the rate of 3% per annum from the date of payment until the date of repayment.

6. If Mr. Wolfe shall die on or after July 1, 1940, then the Standard Company shall be under no obligation to repay to the Anglo Company any portion of the sum of £89,120-0-0 paid to the Standard Company by the Anglo Company under clause 3. hereof.

The sum of £89,120-0-0, stated in paragraph 3 of the agreement dated March 22, 1940, had been paid by Anglo to Standard as follows: £87,177-0-0 on August 22, 1939, which was converted into \$408,097.33 in United States currency at the official rate of exchange on that date, and £1,943-0-0 on December 31, 1939, which was converted into \$7,689.42 in United States currency at the official rate of exchange on that date. Petitioner had no control over the payments of the £89,120-0-0 by Anglo to Standard in 1939 and he paid no income tax to England or Canada on said sums.

Petitioner retired from the employ of Anglo on July 1, 1940. At this date he was 60 years of age. Beginning with a payment on July 31, 1940, petitioner received \$3,038.75 per month down to the date of the trial pursuant to said contract dated March 22, 1940. Standard has withheld income tax from these monthly payments made to petitioner.

Opinion

Disney, Judge: Petitioner contends that the monthly payments received by him from Standard are an annuity and that he is taxable on the amount

received under section 22 (b) (2) of the Internal Revenue Code.¹ His argument is limited to the following points: [19]

I. The amounts received by petitioner from Standard Oil Company of New Jersey were received as an annuity under an annuity contract.

II. The amount paid by Anglo-American Oil Company, Ltd., to Standard Oil Company of New Jersey was the aggregate premium or consideration paid for such annuity.

¹Sec. 22. Gross Income.

* * * * *

(b) Exclusions From Gross Income.—The following items shall not be included in gross income and shall be exempt from taxation under this chapter.

* * * * *

(2) Annuities, Etc.—

(A) In General.—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this chapter or prior income tax laws in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. * * *

The respondent contends, in substance, that the amounts received by the petitioner represent not an annuity, but additional compensation for services, and are therefore taxable in full, and that, even if the payments received are an annuity, the petitioner is taxable in full because he contributed none of the cost of the annuity.

Our first inquiry, therefore, is whether the payments are "Amounts received as an annuity under an annuity * * * contract," within the text of section 22 (b) (2) of the code. If so, only 3 per cent of the consideration or aggregate premiums paid is taxable (at least if paid by the petitioner, and that question we need not decide just here in considering only and primarily whether the payments were received as an annuity under an annuity contract).

After close study of the facts before us, we are of the opinion that the amounts were not received as an annuity under an annuity contract, but were received as a pension in consideration of services rendered in prior years. We can not and should not close our eyes to the realities presented in this case. By petitioner's own words he says that it was his understanding when he undertook the assignment of chairman and managing director of Anglo, at the request of Standard, that if he were eventually retired from the services of Anglo he would receive a life annuity based on the provisions of the superannuation scheme of Anglo in effect on the date of retirement and that payments of such pension in sterling would be guaranteed by Standard in dollars at an exchange rate of \$5 to the pound. The agreement

of March 22, 1940, contains the following paragraph:

And Whereas, the Anglo Company desires to recognize Mr. Wolfe's valuable services to the Anglo Company by contributing to the Standard Company a capital sum of £89,120-0-0 representing the liability which it would have incurred had it granted Mr. Wolfe a sterling pension equivalent to that payable under the superannuation scheme of the Anglo Company.

Soon after arriving in England the petitioner discussed the matter of his retirement with officers of Anglo, and after some discussion it was decided that he was entitled to service as of June, 1902, (the date [20] when he entered the employ of Queen City Oil Co., Ltd., predecessor of, and absorbed by, Imperial Oil Co., Ltd., which was owned largely by Standard), and on October 22, 1931, the resolution of the directors of Anglo stated, "that for the purpose of calculating pension payable by this Company to him," his services should be deemed to commence from June, 1902, "and that he be entitled to pension on the same basis as employees benefiting under the Company's Superannuation Scheme." Thus it is seen that, though he did not come strictly within the provisions of Anglo's superannuation plan, he was to be treated as if he did—"entitled to pension on the same basis' as employees so situated. (Emphasis supplied.) The procedure finally carried out was a mere way of effectuating a pension for the petitioner. It was not, in form, any usual commercial annuity. Such an annuity was, in fact, considered, and the idea not carried out.

In our opinion, the arrangement carried out here provides "benefits from a retirement fund" in the nature of pension compensating for services rendered. The petitioner actually received money in the taxable years. It is clearly within the broad sweep of income as defined by section 22 (a),² and, the Commissioner having determined it to be such, it is petitioner's burden to demonstrate otherwise. So attempting, he relies primarily on section 22 (b) (2). The provision thereof, so far as here involved, is summed up in the words "annuity" and "annuity contract." Their usual connotation does not, in our view, encompass the plan carried out in this matter; and no sound ground is suggested for broadening the concept to cover the contract here considered. The petitioner suggests that it was an annuity because Standard might make a profit or suffer a loss in its execution, depending on the length of life of the petitioner, and relies on a definition of

²Sec. 22. Gross Income.

(a) General Definition.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *.

annuities in the law of New York. Such law does not control interpretation of section 22 (b) (2), and we see nothing in the possibility of profit or loss to Standard to cause consideration of a plan for additional compensation as an annuity. Nor does the fact that Regulations 111, sec. 29.22 (b) (2)-2, states that amounts received as an annuity "include" amounts received in periodic installments, demonstrate that we have an annuity here. The regulation does not say that every periodic payment is annuity. [21]

We regard this case as in essence analogous in principle to *Hooker v. Hoey*, 27 Fed. Supp. 489; affd., 107 Fed. (2d) 1016, where it was held that there was no annuity. There, too, the payments were made to reward long service. No annuity contract was purchased, the employer, Vacuum Oil Co., making payments until its property and obligations were transferred to Standard Oil Co. of New York, which, under its new name of Socony Vacuum Corporation, continued the payments, including the one in question. Though the retirement plan was called "Annuity Plan," just as here the word annuity is sometimes, though not always, used, the court regarded the name of "no particular importance," adding: "It was manifestly a pension plan, a retirement allowance plan, and the payments made under it were payments of pensions or retiring allowances." Referring to the change from one corporation to another as payor, the court said that "All that happened was that Socony Vacuum Corporation took the place of Vacuum Oil Co. as payor of

his pension or retiring allowance." So here we think Standard of New Jersey merely took the place of Anglo and the earlier companies, so far as obligation for pension retirement was concerned. The court in the Hooker case, referring to the contention that there was annuity because of the assumption by Socony Vacuum of the obligation of Vacuum, says:

* * * In the first place, the plaintiff has no annuity, within the meaning of that word in section 22 (b) (2). He has a pension or retirement allowance, taxable under section 22 (a) of the Act as already shown. The exemption as to annuities in the income tax statute does not cover cases where an annuity is not in reality purchased, even though the transaction may be somewhat analogous to the purchase of an annuity. Helvering v. Butterworth, 290 U. S. 365, 369, 370, 54 S. Ct. 221, 78 L. Ed. 365. In the second place, the transaction involving transfer of assets by the Vacuum Oil Company and assumption of liabilities by Socony Vacuum Corporation was not an "annuity contract," except in a forced sense. * * *

We think there is not here more than in a very "forced sense" an "annuity contract" by virtue of the arrangement between petitioner and the two companies. In this connection we should recall that the amounts paid the petitioner were based upon service from 1902, when he entered the employ of Queen City Oil Co., later absorbed by Imperial Oil Co., owned largely by Standard, and continuing through the approximately ten years of employment

by Anglo, Standard stock controlled. If, as in effect the petitioner argues, Anglo simply purchased an annuity contract from Standard as a mere vendor thereof, why should it be based in part on service rendered for earlier employers? But it extends back to Queen City Oil Co. That company's part of any retirement fund was, when it was "absorbed" by Imperial, passed to Imperial in effect in the same way as in the *Hooker v. Hoey* case. Absorption of a corporation by another involves obligations, [22] if any, as well as assets. Then we see that, at the request of Standard and on the understanding and guaranty of Standard that petitioner would receive a pension, he undertook the "assignment" with Anglo, and finally Standard, "in consideration of the aforesaid understanding," agreed to pay petitioner the \$3,038.75 per month for life, Anglo making a "contribution" to the fund necessary. The letter of January 9, 1940, from Standard to Anglo states that "Standard will "guarantee Mr. Wolfe that the money which you have provided, plus the additional amounts which Standard * * * will be required to put up, will be used to assure him the annuity to which he is entitled." (Emphasis supplied.)

It thus becomes clear, in our view, that Standard is no simple seller of an annuity, but in effect is taking over retirement obligations of its affiliate, Imperial (covering from about 1911 or 1912 to 1931, at least half of the whole period covered, and about twice as long as the period with Anglo)—in the same way, in substance, as was done by Standard of New

York in the Hooker case; and that, moreover, the stock control by Standard of Anglo (through Standard Oil Export Corporation) indicates reason, further than the "contribution" by Anglo, for Standard taking over payment of the pension. To the extent of at least about two-thirds of the period on which retirement was based, Standard is in a position similar to that of Standard of New York in the Hooker case, and even more directly itself the payor of its own pension obligation because of the understanding it had with petitioner when he took the assignment to Anglo. Though the petitioner seeks to distinguish the Hooker case, on the ground that there was assumption of liabilities by the successor corporation (which paid the "annuity"), whereas here Anglo paid money to Standard, we think there is no real distinction. In that case Vacuum Oil Co. transferred property to Standard of New York, which assumed Vacuum's obligations and liabilities (including, of course, the liability to pay the "annuity"), and thereafter paid the petitioner such "annuity"; whereas herein Anglo paid Standard of New Jersey money, and Standard paid petitioner. There can be no real difference between the transfer of assets by Vacuum and the transfer of money by Anglo. There was consideration in both cases for the payment to the petitioners. In *Ware v. Commissioner*, Fed. (2d) (Jan. 29, 1947), property was exchanged for fixed monthly installments to be paid during lifetime and it was held that the fact of conveyance of property did not prevent the payments from being annuities; therefore, in the

Hooker case it would make no difference whether the assumption of liabilities was because of receipt of property, instead of money.

The 89,120 English pounds paid to Standard of New Jersey by Anglo was in the words of the agreement of March 22, 1940, merely "a [23] contribution toward the cost of the annuity settlement." (Emphasis supplied.) The letter of March 22, 1940, forwarding the agreement to Anglo, also refers to Anglo's "contribution." Moreover the agreement expressly states that the petitioner "undertook this assignment [with Anglo] at the request of the Standard Company on the understanding that if he were eventually retired from the service of the Anglo Company he would receive a life annuity based on the provisions of the superannuation scheme of the Anglo Company * * * and that payment of such sterling pension would be guaranteed by the Standard Company." This language makes it plain that Standard and petitioner had had an understanding, from prior to the Anglo "assignment" and that it was backed by Standard's guaranty.

The contract of March 22, 1940, recognizes previous obligations on the part of Standard, for petitioner "accepts this annuity settlement as a complete discharge of any and all pension obligations of the Standard Company, the Anglo Company and any other associated companies." (Emphasis supplied.) Standard is thus again seen to be involved in this matter, not as a mere seller of an annuity contract, but by virtue of its previous commitments and affiliations. The letter of August 4, 1939, from

Anglo to Standard states that "the procedure entails obligations on all parties." Also, the letter of August 20, 1931, passing between Standard's "Secretary of Annuities and Benefits Committee" and the officer "in charge of foreign sales" reveals that if Anglo's annuity plan did not "fully take care of Mr. Wolfe's case * * * the matter will have to be given special consideration"; and notations on that letter state that Anglo is to adopt the same rules basically as Standard "with such additions as will care for employees of their own subs."³ To us this indicates that Standard had a duty to Wolfe; otherwise, Standard would not be concerned with his annuity—the matter would not "have to be given special consideration."

Moreover, the notations indicate the general idea of a company associated with Standard taking care of the "employees of their own subs.," and explains Standard's interest in retirement for Wolfe from 1902 to 1940. It appears further that Standard itself is contributing to the retirement fund. The letter of January 9, 1940, shows that Wolfe's retirement would require the money Anglo provided "plus the additional amounts which Standard * * * will be required to put up." There is no showing that £89,120 was required to cover petitioner's retirement, so far as concerned the years of service with Anglo,

³This instrument was read into the transcript, but placed, marked "read into the record," among the exhibits. We quote from the instrument, which obviously was misread, the transcript reading "service" instead of "subs."

and the evidence indicates otherwise. We note also that in the letter from Standard dated June 29, 1939, it is stated, "it is further proposed that Anglo transfer to S. O. of N. J. for deposit to the sub-account for [24] assigned expatriates in the Annuity Fund the estimated present value of Anglo's liability." This has the sound of mere contribution by Anglo to a general fund, rather than purchase of annuity. Moreover, a computation sent under date of June 21, 1939, by Standard's secretary of its annuities and benefits committee to one Pierce of that company, shows "total cost" as \$467,165, assuming retirement at July 1, 1940, and his "annuity" to be \$34,131. The \$34,131 is, according to the computation, the annuity in dollars at \$4.68 a pound, whereas Wolfe was actually paid at \$5 a pound, or \$36,465 (\$3,038.75 a month). "Total cost" would therefore appear to be higher than \$467,165. The amount "contributed" by Anglo, at then current exchange rates, was \$415,-786.75. All this appears to mean that the amount of money necessary to produce even \$34,131 per year was \$467,165. If so, Anglo obviously did merely "contribute." If it cost about \$467,165 for an "annuity" of \$34,131, one of \$36,465 would, ratably figured, cost about \$499,111, which is not greatly different from what is indicated by the estimated figure of \$491,000 in pencil notations at the bottom of the letter of August 4, 1939, from Carder of Anglo to Pierce. Since Anglo paid only about \$415,000, the \$491,000 figure was apparently placed on the letter by some one with Standard. Since £87,177 was the amount stipulated to have been paid originally by

Anglo, we conclude that that amount, and the £1,943 later paid, was merely cost to that company. Moreover, even if Anglo was providing the entire amount necessary, it is obvious from the fact of coverage of years prior to service with Anglo that it was doing so because of its relation to Standard, and not because the approximately 10 years of service performed by petitioner for Anglo required the "contribution" of the full amount of 89,120 pounds sterling. We can not say, on all such evidence, that Anglo purchased an annuity from Standard.

We conclude and hold that the moneys received by the petitioner in the taxable year were not "Amounts received as an annuity under an annuity * * * contract," within the language of that section. Nor is the contract made in 1940 otherwise shown to have been a contract taxable to the petitioner in 1940 (though not reported by him as Federal income or to Canada or England.)

The petitioner upon brief argues and particularly emphasizes that: "The petitioner, in 1940, was a non-resident alien, and income received by him from sources outside the United States was not subject to tax in the United States." He therefore argues that he was "clearly not liable" to the United States. In addition to the above admission, in effect, it is not shown that he was liable to taxation by Great Britain or Canada upon the "annuity" or pension retirement contract of March 22, 1940. Therefore, strictly speaking, such nontaxability by the United States and failure to show taxability by any other country [25] involved, justifies the conclusion that

the petitioner has not shown himself entitled to the deduction claimed; for, in Charles L. Jones, 2 T. C. 924, we considered, as here, a claim for deduction of the amount annually received under a "service annuity" contract purchased by his employer from an insurance company in a previous year, and, after re-viewing Renton K. Brodie, 1 T. C. 275, and others along that line, we said that:

* * * Congress intended to limit the deduction under section 22 (b) (2), supra, to the aggregate premiums or consideration paid by the annuitant except where, as in the Deupree and Brodie cases, supra, the annuitant has been in receipt of taxable income in the year in which the annuity was purchased for him by his employer. (Emphasis supplied.)

We approved taxation to the petitioner of the annual amount received from the insurance company. So, if the petitioner had not "taxable income" in 1940 in the "annuity" funds, he had nothing to recover tax-free later.

The contract of March 22, 1940, was, in effect, a mere agreement, in written form, to carry out the previous arrangement and agreement under which petitioner had worked and to pay additional compensation therefor. It was in no ordinary negotiable or assignable form, though we rely on that fact only as indicative of the intention of the parties. In our opinion, this is not the class of contract taxable at value to the recipient. The contracts in Renton K. Brodie, supra; William E. Freeman, 4 T. C. 582; Hubbell v. Commissioner, 150 Fed. (2d) 516; Oberwinder v. Commissioner, 147 Fed. (2d) 255; Robert P. Hackett, 5 T. C. 1325, and Ward v. Commissioner,

.... Fed. (2d) (Feb. 10, 1947), cited by the petitioner, and all cases found by us following them, were all ordinary commercial annuity contracts, purchased by employers from insurance companies for employees; therefore, the fact that they were held taxable to the recipients is no indication that an agreement here by Anglo and Standard to carry out their pension policy should be considered to have such value as to be taxable to the petitioner as recipient, and therefore offer reason to allow exemption from tax amounts received in later years under the contract.

Reviewed by the Court.

Decision will be entered for the respondent.

[Seal]

The Tax Court of the United States,
Washington, D. C.
Docket No. 7287

FREDERICK JOHN WOLFE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, promulgated March 31, 1947, it is Ordered and Decided: That there is a deficiency in income tax of \$1,101.49 for the year 1941.

[Entered]: April 1, 1947.

/s/ R. L. DISNEY,
Judge.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW OF DECISION OF
THE TAX COURT OF THE UNITED STATES

To the Honorable the Circuit Justice and Circuit
Judges of the United States Circuit Court of
Appeals for the Ninth Circuit:

Taxpayer, the petitioner in this cause, by William Galbally, Jr., counsel, hereby files his petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States entered on April 1, 1947, 8 T. C.—, No. 76, determining a deficiency in the petitioner's federal income taxes for the calendar year 1941 in the sum of \$1,101.49, and respectfully shows:

First: The Petitioner, Frederick John Wolfe, is an individual residing at the present time at Avenida Alvear 1572, Buenos Aires, Argentina. [28]

Second: The controversy involves the proper determination of the petitioner's liability for federal income taxes for the calendar year 1941.

The petitioner, an individual, is a Canadian citizen and became a resident of the United States on or about October 4, 1941. Intermediate March 1931 and October 1941 petitioner was a resident of the United Kingdom, residing at London, England. During 1931, the petitioner became Chairman of the Board and Managing Director of the Anglo-American Oil Company, Ltd., an English corporation. During 1931, it was agreed by and between peti-

tioner and Anglo-American Oil Company, Ltd., that upon his retirement from the company's employment he would be given an annuity computed in accordance with the provisions of the company's superannuation plan in effect at the date of petitioner's retirement. Petitioner was not eligible to participate in said superannuation plan, as such plan was not applicable to any person entering the employ of the company subsequent to May 18, 1928. For the purposes of computing the annuity due petitioner, he was treated as if he had been in the employ of the company since June 1902, when petitioner entered the employ of the Queen City Oil Company, Ltd., a Canadian corporation.

On March 22, 1940, the Anglo-American Oil Company, Ltd., the Standard Oil Company of New Jersey and petitioner entered into an agreement under which, in consideration of the services rendered by petitioner to Anglo-American Oil Company, Ltd., [29] said Anglo-American Oil Company, Ltd., agreed to pay to Standard Oil Company of New Jersey the sum of eighty-nine thousand one hundred and twenty pounds sterling (£89,120-0-0) or the equivalent in United States currency of four hundred and fifteen thousand seven hundred and eighty-six and 75/100 dollars (\$415,786.75), and Standard Oil Company of New Jersey agreed to pay petitioner a life annuity of three thousand and thirty-eight and 75/100 dollars (\$3,038.75) per month, and a like sum to petitioner's wife, Marguerite B. Wolfe, for one year after the death of petitioner, if she should survive petitioner.

Petitioner retired from the services of Anglo-American Oil Company, Ltd., on or about July 1, 1940.

Pursuant to said contract of March 22, 1940, the Standard Oil Company of New Jersey paid to petitioner each month from the date of his retirement to the present time the sum of three thousand and thirty-eight and 75/100 dollars (\$3,038.75). The amount received by petitioner intermediate October 4, 1941 and December 31, 1941 was the sum of eight thousand eight hundred twenty-two and 18/100 dollars (\$8,822.18).

In his income tax return for the year 1941, petitioner included as gross income on account of the payments received from the Standard Oil Company of New Jersey the sum of three thousand and thirty-eight and 75/100 dollars (\$3,038.75), which amount was computed in accordance with the provisions of section 22 (b)(2) of the Internal Revenue Code. [30]

Upon the audit of the petitioner's return for the year 1941, the Commissioner of Internal Revenue determined that the provisions of section 22 (b)(2) were inapplicable to the payments received by the petitioner from the Standard Oil Company of New Jersey, including the entire sum of eight thousand eight hundred twenty-two and 18/100 dollars (\$8,822.18) received by the petitioner intermediate October 4, 1941 and December 31, 1941 in his gross income for said year and determined a deficiency in tax of one thousand one hundred one and 49/100 dollars (\$1,101.49).

Third: The court by which review is sought is the United States Circuit Court of Appeals for the Ninth Circuit.

Fourth: The petitioner, an individual, at the time and in the manner required by law, made and filed his United States income tax return for the calendar year 1941 with the office of the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California. Said office of the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California, is located in the Ninth Judicial Circuit of the United States.

Fifth: On April 1, 1947, the Tax Court of the United States rendered a decision determining a deficiency of income tax of the petitioner for the calendar year 1941. The alleged liability of the petitioner for the said deficiency arises in respect of the taxes, a return for which was filed as alleged in paragraph fourth herein.

Wherefore, Frederick John Wolfe petitions for review [31] of said decision of the Tax Court of the United States.

/s/ WILLIAM GALBALLY, Jr.,
Attorney of Record for
Petitioner.

[Endorsed:] Filed June 25, 1947. [32]

[Title of Tax Court and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To: J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, Washington, D. C.

You are hereby notified that the petitioner on the 25th day of June, 1947, filed with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Tax Court of the United States heretofore rendered in the above-entitled cause. A copy of the petition for review is hereto attached and served upon you.

Dated at Los Angeles, California, this 25 day of June, 1947.

Respectfully,

/s/ WILLIAM GALBALLY, Jr.,
Attorney for Petitioner.

Personal service of the foregoing notice, together with a copy of the petition for review mentioned therein, is hereby acknowledged this 25th day of June, 1947.

/s/ J. P. WENCHEL, CAR
Chief Counsel, Bureau of
Internal Revenue
Attorney for Respondent.

[Endorsed]: Filed Jun. 25, 1947. [34]

[Title of Tax Court and Cause.]

PETITIONER'S CONCISE STATEMENT OF
THE POINTS ON WHICH HE INTENDS
TO RELY ON THE REVIEW BY THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT OF
THE DECISION IN THIS PROCEEDING
OF THE TAX COURT OF THE UNITED
STATES

The following is a concise statement of the points on which the petitioner intends to rely on the review by the Circuit Court of Appeals for the Ninth Circuit, of the decision in this proceeding of the Tax Court of the United States.

1. The Tax Court of the United States erred in failing to find as a fact that the agreement of March 22, 1940, quoted in the eleventh paragraph of the findings of fact was executed by the petitioner and Standard Oil Company of New Jersey within the State of New York and by Anglo-American Oil Company, Ltd., at London, England.
2. The Tax Court of the United States erred in failing to find as a fact that the official rate of exchange on [35] March 22, 1940, was \$3,7243.05 in United States currency for each English pound.
3. The Tax Court of the United States erred in failing to find as a fact that the official rate of exchange on July 1, 1940, was \$4.035 in United States currency for each English pound.

4. The Tax Court of the United States erred in failing to find as a fact that the deficiency from the determination of which this appeal was taken to the Tax Court of the United States was based upon a determination of the petitioner's taxable net income for the calendar year 1941, in which computation no part of the annuity paid to the petitioner by the Standard Oil Company of New Jersey was excluded from the petitioner's gross income.

5. The Tax Court of the United States erred in failing to find as a fact that petitioner did not, prior to March 1, 1931, discuss with any official of Standard Oil Company of New Jersey or Standard Oil Export Company the question of his retirement pay in the event of his eventual retirement.

6. The Tax Court of the United States erred in failing to find as a fact that the question of petitioner's retirement pay in the event of his eventual retirement was never, prior to March 1, 1931, mentioned in the conversations between petitioner and officials of Standard Oil Company of New Jersey and Standard Oil Export Corporation in any [36] way, shape or form.

7. The Tax Court of the United States erred in failing to find as a fact that the facts stated in the paragraph beginning "Whereas" of the contract between petitioner, Anglo-American Oil Company, Ltd. and Standard Oil Company of New Jersey, set forth in the eleventh paragraph of the findings of fact, are true except that there was no understanding with any officer of Standard Oil Company of New Jersey or of Imperial Oil Company that if

petitioner were eventually retired from the service of Anglo-American Oil Company he would receive a life annuity based on the provisions of the superannuation scheme of Anglo-American Oil Company as in effect on the date of retirement, and that payment of such sterling pension would be guaranteed by Standard Oil Company of New Jersey at an exchange rate of five dollars to the pound.

8. The Tax Court erred in finding as a fact that when the petitioner undertook the assignment of Chairman and Managing Director of Anglo-American Oil Company, Ltd., at the request of Standard Oil Company of New Jersey, it was the understanding that if he were eventually retired from the service of Anglo he would receive a life annuity based on the provisions of the superannuation scheme of Anglo-American Oil Company, Ltd. in effect on the date of retirement, and that payment of such sterling pension would be guaranteed by Standard Oil Company of New Jersey in dollars at an exchange rate of five dollars to the pound. [37]

9. The Tax Court of the United States erred in failing to find as a fact that when petitioner went to London in 1931 he was not eligible to participate in the superannuation scheme of Anglo-American Oil Company, Ltd., because the superannuation scheme had been changed to preclude participation by anybody who came into the company after some time in May 1928.

10. The Tax Court of the United States erred in failing to find as a fact that the resolution of the

Board of Directors of Anglo-American Oil Company, Ltd., quoted in the fifth paragraph of the findings of fact, was communicated to the petitioner under date of October 23, 1931, in a memorandum signed by the Secretary of Anglo-American Oil Company, Ltd.

11. The Tax Court of the United States erred in failing to find as facts that during the time the petitioner served as Managing Director and Chairman of Anglo-American Oil Company, Ltd., neither the Standard Oil of New Jersey nor the Standard Oil Export Corporation ever dominated the administration policies of Anglo-American Oil Company, Ltd.; that Anglo-American Oil Company, Ltd., bought oil and gasoline from sundry people; that Anglo-American Oil Company, Ltd. bought oil and gasoline from Standard Oil Company of New Jersey and from others; and that the administration policies of Anglo-American Oil Company, Ltd., were left entirely and absolutely in the hands of the Board of Directors of Anglo-American Oil Company, Ltd. [38]

12. That the Tax Court of the United States erred in failing to find as a fact that the superannuation scheme of Anglo-American Oil Company, Ltd. was not in a very healthy position because of the state of some of its investments, and that from time to time the Board of Directors of Anglo-American Oil Company, Ltd. made very liberal contributions to the superannuation fund to take care of the liabilities Anglo-American Oil Company, Ltd. owed to those who were under the plan.

13. The Tax Court of the United States erred in failing to find as a fact that the petitioner wanted an annuity payable in dollars because he had been advised by his physician on many occasions that England was not a proper climate for him, and he intended to go to the United States upon his retirement.

14. The Tax Court of the United States erred in failing to find as a fact that in 1939 the secretary of Anglo-American Oil Company suggested that the problem of the petitioner's annuity might be worked out by Anglo-American Oil Company, Ltd. sending over a certain amount of money to Standard Oil Company of New Jersey and that the latter would pay the annuity.

15. The Tax Court of the United States erred in failing to find as a fact that pursuant to the resolution of the Board of Directors of Anglo-American Company, Ltd., dated October 22, 1931, the said company was obligated to pay [39] petitioner a pension upon retirement, of the sum of seven thousand two hundred ninety-three pounds (£7,293-0-0) per annum.

16. The Tax Court of the United States erred in failing to find as a fact that the petitioner was never in the employ of Standard Oil Company of New Jersey.

17. The Tax Court of the United States erred in failing to find as a fact that petitioner was never in the employ of Standard Oil Export Corporation.

18. The Tax Court of the United States erred in failing to find as a fact that in 1931, when the petitioner became Chairman of the Board of Directors

of Anglo-American Oil Company, the stock of Anglo-American Oil Company was not stock controlled by Standard Oil Company of New Jersey.

19. The Tax Court of the United States erred in failing to find as a fact that petitioner considered that Anglo-American Oil Company had an obligation to make retirement payments of some kind to him prior to the agreement of March 22, 1940; that they were obligated only to pay an annuity based on his services and in accordance with their scheme of superannuation; and that was their only obligation to the petitioner prior to the agreement of March 22, 1940.

20. The Tax Court of the United States erred in failing to find as a fact that at the time the [40] petitioner became an employee of the Anglo-American Oil Company, there was no correspondence or other writing entered into between himself and Anglo-American Oil Company, Ltd. and Standard Oil Company of New Jersey; that petitioner did not ever have any writing to evidence that he was being offered an executive position with Anglo-American Oil Company, Ltd.

21. The Tax Court of the United States erred in failing to find as a fact that there was no type of contract entered into between petitioner and anybody else as to his employment by Anglo-American Oil Company.

22. The Tax Court of the United States erred in receiving in evidence testimony to the effect that the petitioner did not pay a tax to England on the £89,120 paid by the Anglo-American Oil Company to Standard Oil Company of New Jersey.

23. The Tax Court of the United States erred in admitting to evidence testimony from the petitioner as to the purpose of Standard Oil Company of New Jersey in withholding a part of the monthly payments made to the petitioner.

24. The Tax Court of the United States erred in failing to find as a fact that while petitioner was living in England and an officer of Anglo-American Oil Company he did not prepare his own income tax returns; that they were prepared by the solicitor for the Anglo-American Oil Company, Ltd. [41]

25. The Tax Court of the United States erred in failing to find as a fact that the solicitor for the Anglo-American Oil Company, Ltd. who prepared the English income tax returns of the petitioner knew about the contract of March 22, 1940; that petitioner had told him about that contract.

26. The Tax Court of the United States erred in failing to find as a fact that the solicitor for the Anglo-American Oil Company did not advise the petitioner as to whether or not the pounds paid by the Anglo-American Oil Company to Standard Oil Company of New Jersey were taxable to the petitioner in England.

27. The Tax Court of the United States erred in failing to find as a fact that petitioner did not know anything about that particular phase (that is, the question of whether or not pounds paid by Anglo-American Oil Company, Ltd. to Standard Oil Company of New Jersey were taxable to him in England) of the English income tax law.

28. The Tax Court of the United States erred in failing to find as a fact that no tax was withheld on the £89,120 paid by Anglo-American Oil Company, Ltd. to Standard Oil Company of New Jersey.

29. The Tax Court of the United States erred in failing to find as a fact that the petitioner paid income taxes to England on his salary of £11,000 per year received [42] from Anglo-American Oil Company, Ltd.

30. The Tax Court of the United States erred in admitting the testimony of the witness, Kenneth N. Rackley, to the effect that he was familiar with the policy of Standard Oil Company of New Jersey with regard to the retirement of its employees.

31. The Tax Court of the United States erred in admitting the testimony of the witness, Kenneth N. Rackley, to the effect that Standard Oil Company of New Jersey has never given a retiring employee a lump sum of money in lieu of pension payments, and that Standard Oil Company of New Jersey has never given a retiring employee a choice between receiving a lump sum of money and receiving the payments in the usual manner; and that such a lump sum payment would not be made in accordance with the policy of Standard Oil Company of New Jersey.

32. The Tax Court of the United States erred in failing to find as a fact that on January 12, 1940, Mr. Pierce wrote Mr. Carder as follows:

“When I wrote you the other day I failed to realize that you have a three-corner agreement

between Standard Oil of New Jersey and Mr. Wolfe, as a means of insuring that Anglo had discharged its liability for any premium payments to Mr. Wolfe.

"This phase of the case has not been adequately considered, and we are now undertaking to get our lawyers to agree to some formal release that will be agreed to before the annuity becomes payable on July the 1st. [43]

"You can be sure that this will be advanced as promptly as possible."

33. The Tax Court of the United States erred in admitting to evidence testimony of the witness, Kenneth N. Rackley, to the effect that the file of Standard Oil Company of New Jersey contains no mention or discussion of paying a lump sum to the petitioner upon his retirement.

34. The Tax Court of the United States erred in failing to find as a fact that the witness, Kenneth N. Rackley, on June 21, 1939, addressed a memorandum to Mr. Pierce of Standard Oil Company of New Jersey, reading as does the matter on pages 32, 33 and 34 of the statement of evidence.

35. The Tax Court of the United States erred in failing to find as a fact that the file of Standard Oil Company of New Jersey contained a copy of a letter, signed by F. W. Pierce, to R. A. Carder, reading as does the matter quoted on page 35 of the statement of evidence.

36. The Tax Court of the United States erred in failing to find as a fact that the file of Standard Oil

Company of New Jersey contained a copy of a letter dated March 22, 1940 from Mr. Pierce to Mr. Carder, reading as does the matter quoted on page 36 of the statement of evidence.

37. The Tax Court of the United States erred in failing to find as a fact that the file of [44] Standard Oil Company of New Jersey contained a copy of a letter dated December 11, 1940, signed by W. D. Barcus, who was then on the staff of the Treasurer's Department of Standard Oil Company of New Jersey, to Mr. Roessle who was in charge of the overseas personnel office of Standard Oil Company of New Jersey, reading as does the matter at the bottom of page 37 and at the top of page 38 of the statement of evidence.

38. The Tax Court of the United States erred in refusing to admit in evidence a typical work sheet from the files of the Standard Oil Company of New Jersey.

39. The Tax Court of the United States erred in admitting in evidence the testimony of the witness, George S. Koch, to the effect that he participated in the decisions to make withholdings from the monthly payments made by Standard Oil Company of New Jersey to the petitioner; that such sums were withheld; and in admitting evidence as to why the witness, George S. Koch, directed Standard Oil Company of New Jersey to withhold such sums.

40. The Tax Court of the United States erred in failing to find as a fact that the witness, George S. Koch, in directing Standard Oil Company of New Jersey to withhold from the sums paid by Standard

Oil Company of New Jersey to petitioner gave his opinion; that in doing so he expressed his legal opinion as a lawyer; that it was his duty to protect Standard Oil Company of New Jersey; that any doubts would have been [45] resolved in favor of Standard Oil of New Jersey; that at the time the decision was made, the witness did not have any doubts; that he has since had doubts; and that the witness, George S. Koch, was simply advising his client, his employer, to do whatever would protect them most regardless of what happened to the petitioner.

41. The Tax Court of the United States erred in finding as a fact that petitioner had no control over the payment of the £89,120 by Anglo-American Oil Company to Standard Oil Company in 1939.

42. The Tax Court of the United States erred in concluding that the amounts received by petitioner were not received as an annuity under an annuity contract, but were received as a pension in consideration of services rendered in prior years.

43. The Tax Court of the United States erred in concluding that "the arrangement carried out here provides 'benefits from a retirement fund' in the nature of pension compensating for services rendered."

44. The Tax Court of the United States erred in concluding that if the petitioner had not "taxable income" in 1940 in the "annuity" funds, he had no cost to recover tax free later.

45. The Tax Court of the United States erred in entering its final order of redetermination that there is a [46] deficiency in income tax for the year 1941 in the amount of \$1,101.49.

46. The Tax Court of the United States erred in failing to enter a final order of redetermination that there is no deficiency in income taxes for the year 1941.

47. The decision of the Tax Court of the United States is contrary to the law and regulations and is not supported by substantial evidence.

48. The Tax Court of the United States is an administrative agency within the scope of the Administrative Procedure Act (Public Law 404, 79th Congress, Chapter 324, Second Session) and its decisions are subject to review as provided in said Act.

/s/ WILLIAM GALBALLY, Jr.,
Attorney for Petitioner.

Personal service of a copy of the foregoing statement of points is hereby acknowledged this 31st day of July, 1947.

/s/ CHARLES OLIPHANT, CAR
Acting Chief Counsel, Bureau
of Internal Revenue.

[Endorsed]: Filed July 31, 1947.

[Title of Tax Court and Cause.]

STATEMENT OF EVIDENCE

The following is a statement (excluding those portions thereof covered by the findings of fact and as to which there is no controversy on the appeal) of evidence in narrative form in the above-entitled cause.

The evidence was presented at New York, New York, on October 7, 1946, before the Honorable Richard L. Disney, Judge. (R. p. 1) There was filed a partial stipulation of facts signed by counsel for both parties (without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts stipulated), and the facts therein set forth were received in evidence. (R. pp. 10-11) The pertinent portions of said facts (for the purposes of this statement) are as follows:

Under date of March 22, 1940, the agreement quoted in the eleventh paragraph of the findings of fact was entered into. Said agreement was executed by petitioner and Standard Oil Company of New Jersey within the State of New York at the office of the latter at 30 Rockefeller Plaza, New York, New York, and by Anglo-American Oil Company, Ltd., at London, England. (Paragraph 1, Partial Stipulation of Facts; Exhibit 1-A).

The official rate of exchange on March 22, 1940, was \$3.724305 in United States currency for each English pound. The official rate of exchange on July 1, 1940, was \$4.035 in United States currency

for each English pound. Said official rates of exchange are as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York. (Paragraph 3 Partial Stipulation of Facts).

FREDERICK J. WOLFE

the petitioner, was called as a witness on his own behalf, and being first duly sworn testified as follows:

On Direct Examination

I am the petitioner in this proceeding. At the time the petition was filed I resided in California. I now reside in New York. I always have been a citizen of Canada. (R. p. 12) In June, 1902, I joined the Queen City Oil Company, which is a Canadian corporation. The Queen City Oil Company was later absorbed by the Imperial Oil Company, the stock of which company [49] is largely held by Standard Oil Company of New Jersey. I was only more or less of a junior clerk at the time, but I would say the absorption of the Queen City Oil Company by the Imperial Oil Company took place around about 1911 or 1912. That is just my impression. I continued in the employ of the Imperial Oil Company until I left for England on March 1, 1931, at which time I was Vice-President and a member of the Board of Directors. (R. p. 13) On March 1, 1931, I went to England to take the position as Managing Director of Anglo-American Oil Company, Ltd. (R. pp. 13-14)

(Testimony of Frederick J. Wolfe.)

Prior to March 1, 1931, I would say two or three months prior to that, Mr. G. Harrison Smith, who was the senior Vice-President of Imperial Oil Company, Ltd., asked me if I would go to England to take over the duties as Managing Director of Anglo-American Oil Company, Ltd. I said I would go. Imperial Oil Company was largely owned by Standard Oil Company of New Jersey. (R. p. 14) I had conversations with executives of Standard Oil Company of New Jersey with respect to the matter of my going to England to take over this new position. (R. pp. 14-15) I talked with several of the executives. I talked to Mr. Teagle, who was then President of the Company; Mr. Hunt, who was one of the vice-presidents; Mr. James Moffett, who was one of the vice-presidents; and Mr. D. L. Harper, who was President of the Standard Oil Export Corporation. I talked to these gentlemen in the Standard Oil Company of New Jersey [50] largely to get the background of the Anglo-American Oil Company, Ltd., which company I was going to operate.

Anglo-American Oil Company, Ltd., was stock-controlled by the Standard Oil Export Corporation, which in turn was controlled by the Standard Oil Company of New Jersey. (R. p. 15) It owned the stock.

In response to the question:

“In your conversations with Mr. Smith, did you discuss compensation, that is, what salary you were to get?”

(Testimony of Frederick J. Wolfe.)

the witness answered:

"I think I did, with Mr. Smith and several of these other"

The witness continued:

I did discuss the salary I was to receive.

I did not at any time discuss with Mr. Smith, Mr. Teagle, Mr. Hunt or any of the other gentlemen whose names I have mentioned, the question of my retirement pay in the event of my eventual retirement. It was never mentioned,—not in any way, shape or form. (R. p. 16)

The facts stated in the paragraph beginning "Whereas" of the contract between myself, Anglo-American Oil Company, Ltd. and Standard Oil Company of New Jersey, set forth in the eleventh paragraph of the findings of fact, are true with one reservation [51] (R. p. 17) I would say that the paragraph is absolutely right, except that there was no understanding with any officer of the Jersey company or of the Imperial Oil Company, Ltd. (R. p. 18) The understanding stated in that paragraph was my understanding. I had not discussed the matter with any official of Standard Oil Company of New Jersey or the Imperial Oil Company, Ltd. (R. p. 20)

On or about July 1, 1931, I became Chairman of the Board of Directors of Anglo-American Oil Company, Ltd., and continued in that capacity and as Managing Director until my retirement on July 1, 1940, at which time I was both Managing Director and Chairman of the Board. In an English com-

(Testimony of Frederick J. Wolfe.)

pany the duties of a chairman are more or less similar to those of a president of a company in the United States. In England we have few, very few presidents. In other words, it might almost be said that the positions of chairman and president in the two countries are reversed. The chairman is an operating man and only in very large companies—in fact I know of only half a dozen,—are there such things as presidents. Anglo-American Oil Company, Ltd., did not have a president. (R. p. 21)

The managing director, I imagine, would (R. p. 21) be more or less similar to what you call over here, an executive vice-president.

When I first went to London,—after I went to London, I had discussions with executives of the Anglo-American [52] Oil Company, Ltd., with respect to my retirement pay on my eventual retirement. I discussed it with several executives over there, chiefly with Mr. Carder, who at that time was secretary of the company. I also discussed it with Mr. Jenkins, the Assistant Secretary, but only in a limited way.

Mr. Carder was the Secretary of the company. He was in charge of finance. He looked after the superannuation plan. He was in charge of all accounting. He was not only, in addition to being (R. p. 22) the general secretary of the company, that is, attending Board meetings and recording the minutes, but he also was an operating man in that he looked after all bookkeeping. You might say he was a controller.

(Testimony of Frederick J. Wolfe.)

I found, when I went over there, so far as I was concerned, with respect to the superannuation scheme of Anglo-American Oil Company, Ltd., I was not eligible because the scheme had been changed to preclude participation by anybody who came into the company after some time in May, 1928. I further found that the plan, the funds of the scheme, were invested in stocks which I did not consider investment stocks; in other words, I would think more or less that the fund was not in a very sound financial condition. (R. p. 23)

In the case of a man who was retiring at the age of 65, the amount he would receive under the superannuation scheme of Anglo-American Oil Company, Ltd., would depend on the number of years that he had been with the company. Age 65 was the retirement age for males. (R. pp. 23-24) It was lower than that for females. But at age 65 he would be entitled to two per cent. of his average salary for the past five years, with a maximum of 75 per cent. of that average five year salary. He would be entitled to that as an annual annuity as long as he lived. For example, suppose the man for the last five years of his service had earned an average of £1,000 a year and he had worked for the company for ten years. Two per cent. of £1,000 would be £20. Ten times that would be £200, which would be his annuity for his life. (R. p. 24) This same scheme was available to a man who retired at the age of 60, but he would have to take a discount. (R. pp. 24-25) That discount, if he were eligible for the

(Testimony of Frederick J. Wolfe.)

full 75 per cent., would reduce his annuity to 66 $\frac{1}{3}$ per cent. It is my recollection that that is how it was. In other words, if he had been there long enough, 30 years, or 33 years, or 34 years, the maximum he could get was 66 $\frac{1}{3}$ or 66.3 of his average salary for the last five years.

My discussions with Mr. Carder and Mr. Jenkins were had fairly soon after I went to England. They were prior to October 22. (R. p. 25)

I told Mr. Carder and Mr. Jenkins, very plainly, that I wanted to be considered on the same basis as those who were under the superannuation plan—this basis of 2 per cent. (R. p. 25) a year of service. There was discussion of the length of time that they were to consider that I had been in [54] the employ of the company. After some discussion, we decided that I was entitled to service as of June, 1902, when I first started with the Queen City Oil Company. Mr. Carder was quite in agreement.

The witness identified a document shown him as a notification to him, dated October 23, 1931, covering the resolution quoted in the fifth paragraph of the findings of fact, signed by R. A. Carder, Secretary of Anglo-American Oil Company, Ltd., which document was as follows:

“I have to advise you that at a meeting of the directors held on the 22nd instant, the following resolution was passed: ” (Here follows the resolution as quoted in the fifth paragraph of the findings of fact.) (R. pp. 26-28)

(Testimony of Frederick J. Wolfe.)

Thereupon, said document was offered and received in evidence and marked petitioner's Exhibit 1.

During the time that I served as Managing Director and Chairman of Anglo-American Oil Company, Ltd., neither the Standard Oil Company of New Jersey nor the Standard Oil Export Corporation ever dominated the administration policies of the said company. We bought oil and gasoline from sundry people. We bought from Standard Oil of New Jersey; we bought it from outsiders. The administration policies of the company were left entirely and absolutely in the hands of the Board of Directors of Anglo-American Oil Company, Ltd.

The superannuation scheme of Anglo-American Oil Company, Ltd., was not in a very healthy position because of the state of some of its investments. (R. p. 28) From time [55] to time the Board of Directors of Anglo-American Oil Company, Ltd., made very liberal contributions to that fund. (R. pp. 28-29) Those contributions were made to take care of the liabilities they owed to those who were under the plan. They made contributions in excess of what they would have made except for the condition of the fund, the condition of the investments. (R. p. 29)

Prior to August, 1939, I decided to retire from my position with Anglo-American Oil Company, Ltd. I had been advised by my physician on many occasions that England was not a proper climate for

(Testimony of Frederick J. Wolfe.)

me. I was a real sufferer from asthma, and I had been advised by my physician that when the opportune time came I should get out of the country and come to a warmer country, such as California. (R. p. 29)

After making the decision to retire, I had conversations with executives of the Anglo-American Oil Company, Ltd., with respect to my retirement. (R. pp. 29-30) I had several conversations particularly with Mr. Carder.

Mr. Carder, at the time of these conversations, was on the Board of Directors and was Financial Director. One of his functions as Financial Director had all to do with money matters,—with matters pertaining to annuities. He still had, in a way, the accounting, coming through the Secretary-Treasurer. But he was really the financial man on the Anglo-American Oil Company, Ltd., Board. [56]

I told Mr. Carder that I intended to live in the United States. I told him further that when I retired,—and I was planning on retiring,—that I would want my annuity payable to me in American dollars. To that Mr. Carder was quite agreeable. (R. p. 30) We discussed the matter of his purchasing an annuity from an insurance company (R. p. 30) and then he suggested that it might be worked out by Anglo-American Oil Company, Ltd., sending over a certain amount of money to Standard Oil Company of New Jersey, and the latter would pay the annuity.

(Testimony of Frederick J. Wolfe.)

Thereafter I talked the matter over with Mr. Myers.

Mr. Myers at that time,—I think he is still—was associated with the annuities and benefits plan of the Standard Oil Company of New Jersey.

I discussed this matter of the payment in dollars with Mr. Myers. Particularly, he asked me what the rate of exchange was that I wanted and I told him \$5.00 to the pound. To that he was quite in agreement.

Prior to some time in March, I fixed the time of my retirement, I should think March, 1940. The date upon which I had decided I would retire was July 1, 1940. (R. p. 31)

In the last five years of my service with Anglo-American Oil Company, Ltd., my average compensation was eleven thousand pounds (£11,000-0-0) per annum. On the [57] basis of the resolution of October, 1931, I was to be deemed to have been in service since June, 1902. So that on July 1, 1940, I had been in service thirty-eight (38) years. On July 1, 1940, I was sixty (60) years of age. So that at that time the maximum annuity that I could demand was 66.3 per cent. of £11,000, that is £7,293 as I remember. (R. pp. 32-33)

Mr. Myers told me he drew the agreement of March 22, 1940.

The language in the agreement of March 22, 1940, in the first "Whereas" clause, with respect to \$5.00 to the pound, was put into the contract because I decided I was not going to live in England. I did not want pounds; I wanted dollars, and it was

(Testimony of Frederick J. Wolfe.)

agreed that I would receive it in dollars on the basis of what those pounds meant, at \$5.00 to the pound.

I am familiar with the contract of March 22, 1940. (R. p. 33) The facts stated in that contract as statements of fact, other than the ones we have already discussed, are absolutely true. (R. pp. 33-34)

The payments of \$3,038.75 per month to me by Standard Oil Company of New Jersey during the year 1941, which the respondent has admitted were made, were paid to liquidate an obligation that Anglo-American Oil Company, Ltd., had to me. The payments were made pursuant to the contract of March 22, 1940. The first payment of \$3,038.75 was on July 31, 1940. [58] I have received that right up to the present time. (R. p. 34) I have received no amounts from said Standard Oil Company of New Jersey, other than the amounts I have testified to (R. pp. 34-35).

I was never in the employ of the Standard Oil Company of New Jersey. I was never in the employ of Standard Oil Export Corporation.

I was succeeded as Chairman of the Anglo-American Oil Company, Ltd., by Mr. Ed. Soubrey.

Thereupon the following colloquy took place:

By Mr. Wynn:

Q. Mr. Wolfe, I show you a document and ask you what that is?

A. Well, this is a letter from Mr. Soubrey to me.

Q. Dated when?

A. Dated November 19, 1943, advising that the Anglo-American Oil Company——

(Testimony of Frederick J. Wolfe.)

Q. Just a minute. Was this letter written at your request? A. Yes.

Q. How did it come to be written?

A. I asked him for it.

Q. What did you ask him to do?

A. To write a letter saying that the Anglo-American Oil Company acted as my agent. [59]

Q. The point I am making is this, Mr. Wolfe: you asked him for whatever understanding Anglo-American Oil Company may have had in this transaction? A. That is right.

Q. Is that right? A. That is right.

Mr. Wynn: If your Honor please, I offer in evidence a letter dated November 19, 1943, from Mr. Soubrey, chairman of the Anglo-American Oil Company, addressed to Mr. Wolfe.

Mr. Eckman: Your Honor, I object to the introduction of that letter. The letter in part says:

“The Anglo-American Oil Company, Ltd., acted as your agent in this matter and sent 89,-120 pounds at your request to the Standard Oil Company of New Jersey.”

That is just a partial quotation.

I object to the letter, first of all, your Honor, because such action must have been the result of formal action by the board of directors of Anglo and the chairman of Anglo, it seems to me, is not qualified to make a formal record of that action.

Secondly, I object to the letter because the words “acted as your agent in this matter” necessarily

(Testimony of Frederick J. Wolfe.)
imply a conclusion of law and not a statement of fact.

It also goes on to say that

"For the purpose of providing a life annuity for you."

Thirdly, I object to the letter because it was supplied and written at the direct request of the petitioner, after this case had arisen before the Treasury Department.

The Court: Let me see the exhibit.

Have you anything to say?

Mr. Wynn: If your Honor please, I might merely say this: I am offering this to show the letter was [60] written, that certain facts were stated as being the understanding of the chairman of the company.

This company is abroad.

It is not written for the purpose of establishing—I think we have already established the case—it simply was written for the purpose of establishing what the understanding of the then chairman was.

Mr. Eckman: If your Honor please, the signer of the letter was not chairman at the time the events of which he speaks took place.

The Court: Of course, the conclusion as to agency is obviously not proper evidence. I do not think any of this is proper evidence.

Mr. Wynn: Well, if your Honor please, I will withdraw the offer.

(Testimony of Frederick J. Wolfe.)

The Court: Very well. (R. pp. 35-38)

Thereupon a tax return made by the petitioner for the calendar year 1941, which had been certified as correct by the Chief Clerk of the Treasury Department, was admitted in evidence as petitioner's Exhibit 2. In said return, petitioner reported income from "annuities" of \$3,041.51 with the following explanation:

Statement Regarding Annuity Income:

The taxpayer is a citizen of Canada and became a resident of the United States on October 4, 1941. At that time he entered this country on an immigration visa intending to become a resident thereof.

The taxpayer receives an annuity from the Standard Oil Company of New Jersey, the payments being made at the rate of \$3,038.75 per month. The payments received in 1941 during the taxpayer's residence in the United States totaled \$8,822.18. The cash consideration paid to the Standard Oil Company of New Jersey totaled [61] \$415,786.75*. The taxpayer is excluding from his gross income the amount of \$5,780.67, representing the excess of the annuity payments received over three per centum of the principal amount for the period during which the taxpayer was a resident of the United States.

The annuity payments are made pursuant to an agreement between the Anglo-American Oil

(Testimony of Frederick J. Wolfe.)

Company, Limited, the Standard Oil Company of New Jersey, and the taxpayer. A copy of the agreement is attached herewith.

* £87,177 @ 4.68125 = \$408,097.33
£ 1,943 @ 3.9575 = 7,689.42

Total consideration
paid\$415,786.75

On Cross-Examination, the witness, Frederick J. Wolfe, testified:

The stock of the Anglo-American Oil Company, Ltd., was, within one per cent, owned, directly or indirectly, by Standard Oil Company of New Jersey. I suppose you would say said stock was completely owned by Standard Oil Company of New Jersey. At the time I was Chairman, there was a Board of Directors of Anglo-American Oil Company, Ltd. I presume the old Anglo-American Oil Company, which at that time was not owned—stock controlled—by the Standard Oil Company of New Jersey, elected the members of the Board of Directors of Anglo-American Oil Company. I am speaking of when I went there in 1931. (R. p. 39) At the time of my retirement the company was wholly owned by the Standard Oil Company of New Jersey. (R. pp. 39-40) I will say that largely I, myself, elected the Board of Directors of Anglo-American Oil Company, [62] Ltd., at the time of my retirement. I nominated the people for election, and I think in all cases my nominations were agreeable to Standard Oil Company of New Jersey. In other

(Testimony of Frederick J. Wolfe.)

words, Standard Oil Company of New Jersey had the final say as to the members of the Board of Directors. And had Standard Oil disapproved of one of my nominations, I presume it would be one of their prerogatives under the one hundred per cent. ownership of the stock, to have elected anyone else whom they had chosen. (R. p. 40)

I definitely considered that Anglo-American Oil Company, Ltd., had an obligation to make retirement payments of some kind prior to the agreement of March 22, 1940. They were obligated only to pay an annuity based on my services, and in conformity with their scheme. That was their only obligation to me prior to the agreement. (R. p. 41)

I left the employ of Imperial Oil Company and entered the employ of Anglo-American Oil Company, Ltd., because I was asked by Mr. G. Harrison Smith of the Imperial Oil Company to take up this position. If Mr. Walter C. Teagle, President of Standard Oil Company of New Jersey, notified Mr. Smith to ask me, I would say that I got the offer really from Mr. Teagle. But what the conversation was between Mr. Teagle and Mr. Smith I do not know. I would say it was a fair assumption that Mr. Smith asked Mr. Teagle to approach me. It could be, in other words, that realistically speaking, the offer came from Standard [63] Oil Company of New Jersey. At that time I had no understanding as to my retirement pay at the time I entered the employ of Anglo-American Oil Company, Ltd. It is not true that Standard Oil Company of New Jersey guaran-

(Testimony of Frederick J. Wolfe.)
teed the payment of a retirement to me. (R. p. 42)

There was no correspondence or other writing entered into between myself and Anglo-American Oil Company, Ltd., nor Standard Oil Company of New Jersey at the time or just about the time I went to work for Anglo-American Oil Company, Ltd., in 1931. (R. pp. 42-43) I did not ever have any writing to evidence that I was being offered an executive position with Anglo-American Oil Company, Ltd.

Thereupon, the following colloquy took place:

Q. Was there any type of understanding entered into between you and anybody else as to that employment? A. Well——

Mr. Wynn: If your Honor please, I object to the witness stating what his understanding was. It is a conclusion.

Mr. Eckman: I do not believe I was asking for an understanding.

The Court: Read the previous question.

(Question read.)

Mr. Eckman: If I change the word "understanding" to "contract."

Mr. Wynn: I object to that. He can testify as to what was said. [64]

The Court: Objection overruled.

Mr. Wynn: May I have an exception, your Honor?

The Court: Exception allowed.

(Testimony of Frederick J. Wolfe.)

By Mr. Eckman:

Q. Will you answer the question?

(The previous question was read by the reporter, altered as follows:

"Was there any type of contract entered into between you and anybody else as to that?"

By Mr. Eckman:

Q. Answer the question, if you can.

A. No, sir. (R. pp. 43-44)

Thereupon, the following colloquy took place:

By Mr. Eckman:

Q. Did you pay any income tax to England or to Canada on the payment of the 89,000 pounds paid by Anglo to Standard?

Mr. Wynn: I object, your Honor.

Mr. Eckman: Your Honor, it shows how the witness considers the money was paid.

Mr. Wynn: It is not a question of what he considered it. It is what it was.

Therefore I urge it is immaterial as to what he did as far as Canadian and English taxes are concerned.

The Court: The objection is overruled. I do not think that is going to help me, but it might, as I see this whole thing.

Mr. Wynn: If your Honor please, I am quite sure that your Honor will give it its proper weight, but for the record, may I have an exception?

The Court: Exception allowed. [65]

(Testimony of Frederick J. Wolfe.)

By Mr. Eckman:

Q. Will you answer the question, please?

A. I did not pay it. (R. pp. 44-45)

Thereupon, the witness continued:

The date of my retirement was set in March, but I decided to retire in August, 1939. (R. p. 45)

Why the payments were made, as the agreement of March 22, 1940, shows, in August and December, 1939, when I did not (R. p. 45) retire until July, 1940, was something over which I had no control. I can only guess. I do not know. (R. p. 46)

Thereupon, the following colloquy took place:

Q. Had Standard withheld any part of the monthly payments to you? A. Yes.

Q. For what purpose?

Mr. Wynn: If your Honor please, I object to this witness being asked what purpose the Standard Oil Company of New Jersey had in that.

The Court: He is one party to this. He may have some knowledge that may be of value. The objection is overruled.

Mr. Wynn: Exception, if your Honor please.

The Court: Exception allowed.

By Mr. Eckman:

Q. For what purpose was the money withheld?

A. They would call it a withholding tax. [66]

Q. A withholding tax?

A. I think that is what they would call it.

Q. When did Standard begin withholding the tax from your pension payments?

A. I suppose when the withholding came into existence as a Government regulation.

(Testimony of Frederick J. Wolfe.)

Q. But you don't know exactly when it was?

A. Not offhand, no. (R. pp. 46-47)

Thereupon, on Redirect Examination, the witness Frederick J. Wolfe, testified:

While I was living in England and an officer of Anglo-American Oil Company, Ltd., I did not prepare my own income tax returns. They were prepared by Mr. Montague Piesse, the solicitor for the Anglo-American Oil Company, Ltd. He knew about the contract of March 22, 1940. I told him about it. (R. pp. 47-48) He did not advise me as to whether or not the pounds paid by Anglo-American Oil Company, Ltd., to Standard Oil Company of New Jersey were taxable to me in England. I did not know anything about that particular phase of the English income tax laws. No tax was withheld by the company. I paid income taxes to England on my salary of eleven thousand pounds (£11,000-0-0) per annum. (R. pp. 48-49)

KENNETH N. RACKLEY

was called as a witness on behalf of the respondent, and being first duly sworn, testified as follows: [67]

On Direct Examination

My occupation is secretary of the annuities and benefits committee of the Standard Oil Company of New Jersey. I have held that position for three and one-half years. Before that time, I was on the staff of the said annuities and benefits committee, but not the secretary. I had been so employed since 1925. (R. pp. 50-51) My job is to administer vari-

(Testimony of Kenneth N. Rackley.)

ous plans of the Standard Oil Company of New Jersey, pension plans and so forth. As a result of my employment, I am familiar with the retirement and pension plans of said company.

Thereupon, the following colloquy took place:

Q. Are you also familiar with the policy of Standard Oil with regard to the retirement of its employees? A. Yes.

Mr. Wynn: If your Honor please, I object. There has been no proof in this record that Mr. Wolfe was ever an employee of the Standard Oil Company of New Jersey, and therefore I think this evidence is not pertinent to the issue before the Court.

He was an employee of the British company.

Mr. Eckman: It has been proved in the record, I believe, that Anglo-American was a wholly-owned subsidiary of Standard, and that Standard was responsible for the election of directors to the Board of Anglo-American.

The Court: I think I can give it such weight as it deserves. Overruled.

Mr. Wynn: Exception. [68]

Q. (By Mr. Eckman): Have you answered the question? Are you also familiar with the policy of Standard with regard to the retirement of its employees? A. Yes. (R. pp. 51-52)

The policy of Standard Oil Company of New Jersey is to retire employees at their own request after they have reached the stipulated age and service and under other circumstances such as length of service and disability and so forth.

(Testimony of Kenneth N. Rackley.)

Thereupon, the following colloquy took place:

Q. Has Standard Oil to your knowledge ever given a retiring employee a lump sum of money in lieu of pension payment?

Mr. Wynn: If your Honor please, I object. In the first place, we concede that Mr. Wolfe was not entitled to any lump sum of money, so that this is not pertinent to the issue before the Court.

In the second place, what Standard Oil may have done to some other employees is not pertinent to the agreement it made with Mr. Wolfe.

The Court: I still think that I can give this testimony such weight as it deserves when I see this entire record.

(The preceding question was read by the reporter as follows:

“Q. Has Standard Oil to your knowledge ever given a retiring employee a lump sum of money in lieu of pension payments?”)

A. It has not.

Q. Has Standard to your knowledge ever given a retiring employee a choice between receiving a lump sum of money? [69]

The Court: I take it you wish the same objection to that line of testimony?

Mr. Wynn: If your Honor please.

The Court: The petitioner will have his exception to this entire line of questioning.

Q. (By Mr. Eckman): Has Standard to your knowledge ever given a retiring employee a choice

(Testimony of Kenneth N. Rackley.)

between receiving a lump sum of money and receiving the payments in the usual manner?

A. No.

Q. Would such a lump sum payment be made in accordance with the policy of Standard?

A. It would not. (R. pp. 52-53)

I understand that Standard Oil Company of New Jersey owns the controlling voting stock of Anglo-American Oil Company, Ltd., but I do not (R. p. 53) know what percentage.

I am familiar with the monthly payments made to Frederick J. Wolfe, the petitioner, by Standard Oil Company of New Jersey. I have the official file of Standard Oil Company of New Jersey relating to the retirement of the petitioner. I can identify that file and its contents as part of the official records of Standard Oil Company of New Jersey. The file that I have is what we know as the employee file of F. J. Wolfe. It is the file of certain records of this employee (R. p. 54), such as we may have had in New York—not the Anglo-American Oil Company's record but such records as we may have in New York. I have examined the file. [70]

The file contains a copy of a letter of August 20, 1931, from Mr. Myers of Standard Oil Company of New Jersey to Mr. Harper of Standard Oil Company of New Jersey. Mr. Myers at the time this letter was written was then secretary of the annuities and benefits committee, the position I now hold. Mr. Harper was, I believe, in charge of foreign sales.

Thereupon, there was read into the record the letter set forth in the fifth paragraph of the findings of fact.

(Testimony of Kenneth N. Rackley.)

Thereupon, the witness continued:

I can identify the handwriting of the penciled notations on the letter just read. Those penciled notations are by the secretary who succeeded Mr. Myers, M. F. Stahl.

Thereupon, said penciled notations as they appear in the fifth paragraph of the findings of fact were read into the record.

The file contains a copy of a letter of June 29, 1939, from F. W. Pierce to Mr. McCobb. Mr. McCobb in 1939 was a director, Mr. Pierce was executive assistant to the President of the company.

Thereupon, a copy of said letter was offered and received in evidence and marked respondent's Exhibit A. Said letter is as follows: [71]

June 29, 1939

Mr. T. C. McCobb,
Building.

Retirement of F. J. Wolfe

Dear Mr. Cobb,

We understand that under the agreement with Mr. Wolfe, he is to receive, upon retirement, a life annuity calculated in accordance with the Anglo Plan and their discount absorption program (the latter being identical to ours), the annuity to be payable in the United States in dollars converted at the rate of \$5.00 to the pound. I give below a state-

(Testimony of Kenneth N. Rackley.)

ment showing the amount of Mr. Wolfe's annuity computed as of five possible retirement dates, in pounds as well as dollars converted at the rate of \$5.00 to the pound and \$4.68 to the pound, the rate prevailing on June 20th:

Assumed Effective Date	Pounds	Annual Annuity	
		Dollars @\$5.00	Dollars @\$4.68
1/1/40	£7,095	\$35,475	\$33,204
7/1/40	7,293	35,475	34,131
1/1/41	7,524	37,620	35,212
7/1/41	7,788	38,940	36,447
1/1/42	8,085	40,425	37,837

The procedure which is to be followed in respect of payment and transfer of funds has been discussed with Mr. Wolfe and we find that it presents some problems. However, subject to proper approval, it is proposed that the annuity be paid by New York in dollars, converted at the rate of \$5.00 to the pound. In view of the uncertainties of the future and in order to assure that the necessary funds be available here when needed, it is further proposed that Anglo transfer to S.O.Co. of N.J. for deposit to the sub-account for assigned expatriates in the Annuity Fund the estimated present value of Anglo's liability, assuming retirement as of January 1, 1940, computed on a 3% interest basis and discounted for mortality but not for labor turnover due to any other cause. This transfer would be dollars at the rate of exchange prevailing at the time of payment. If retirement occurs at a later date, Anglo would make the necessary additional capital contribution. In the event of Mr. Wolfe's death

(Testimony of Kenneth N. Rackley.)

prior to retirement, the capital contribution plus 3% interest, computed annually, would be returned to Anglo unless the pension had meanwhile been insured in which event, the premium refund, if any, would be determined in accordance with the [72] provisions of the insurance contract under which it was purchased. Any cost incurred in New York by reason of a sterling rate less than \$5.00 would be absorbed by Jersey and charged to such account as may be later determined. The Anglo sterling pension capital contribution would possibly not be a deductible item for income tax purposes so far as concerns Anglo.

Very truly yours,
/s/ F. W. PIERCE.

There is in the file a letter of August 4, 1939, from Mr. Reginald Carder of Anglo-American Oil Company, Ltd., to Mr. Pierce. I cannot identify Mr. Reginald Carder (R. p. 58).

Thereupon, a copy of said letter containing written notations was offered and received in evidence and marked respondent's Exhibit B (R. pp. 59-60). Said letter is as follows:

4th August 1939.

Personal and Confidential

Mr. Frank Pierce,
Annuities & Benefits Dept.
30 Rockefeller Plaza,
New York City, U. S. A.

Dear Mr. Pierce,

With regard to the discussions which Mr. Wolfe

(Testimony of Kenneth N. Rackley.)

had during his recent visit to New York as summarized in memorandum dated 29th June 1939 from Mr. J. W. Myers to Mr. T. C. McCobb, as the procedure proposed entails obligations on all three parties affected and is of considerable importance, it seems to us that by far the best method of dealing with the matter is to embody the arrangement in a simple three-party agreement.

Accordingly, such agreement has been drawn up by Mr. Montagu Piesse and is enclosed herewith and we suggest that the Jersey Company should complete [73] this in triplicate, sending all three copies to us for completion by ourselves and Mr. Wolfe, following which one copy would be returned to you.

Our Actuary advises us that the capital liability of the amount of Annuity if payable as from 1st January 1940 works out at £88,049—and the present value of this as at 1st September 1939 is £87,177—. It is this latter amount which should be inserted in the agreement and on completion of the documents we would therefore either hold at your disposal or remit this sum to you.

Should be glad if, when returning the documents referred to, you would be good enough to send them under personal cover addressed to myself.

Yours very truly,

R. A. CARDER.

(Testimony of Kenneth N. Rackley.)

Enclosure.

(Handwritten notations—

£87,177 @ 4.68 = 408,988

£87,177 @ 5.00 = 435,885

(Group annuity)

(Limited to 20,000)

Our estimated cost at 3% 491.000

Without loading 451.00

There is in the file a letter bearing in the lower left hand corner the initials F. W. Pierce addressed to R. A. Carder, Anglo-American, 38 Queen Ann's Gate, London S.W.1., England (R. pp. 60-61).

Said letter was thereupon read into the record as follows:

“Dear Mr. Carder:

When I wrote you the other day, I failed to realize that you have a three-corner agreement between Standard Oil of New Jersey and Mr. Wolfe, as [74] a means of insuring that Anglo had discharged its liability for any pension payments to Mr. Wolfe.

This phase of the case has not been adequately considered, and we are now undertaking to get our lawyers to agree to some formal release that will be agreed to before the annuity becomes payable on July the 1st.

You can be sure that this will be advanced as promptly as possible.

No Signature.”

(Testimony of Kenneth N. Rackley.)

Thereupon, the following colloquy took place:

Q. Is there in the file any mention or discussion of paying a lump sum to Mr. Wolfe upon his retirement? A. No.

Mr. Wynn: If your Honor please, I will have to renew my objection to this line of questions that I made a moment ago.

The Court: Objection overruled. Exception allowed.

I want to see what it all means. I do not know what weight to give it—maybe none, maybe much.

Proceed.

(Previous question read.)

A. To the best of my knowledge, there is no such statement in the file. (R. pp. 61-62).

Thereupon, on Cross-Examination, the witness, Kenneth N. Rackley, continued:

I think I only met Mr. Wolfe once until I saw him in the courtroom today. Mr. Wolfe, to my knowledge, has never [75] been an employee of the Standard Oil Company of New Jersey. When I spoke of this file as the employee's file, it was not my intention to characterize him as an employee of Standard Oil Company of New Jersey (R. p. 62).

The file does not contain a copy of a letter dated August 18, 1939, from Mr. Shaw to Mr. Carder (R. pp. 62-63). We do not have stamps in our file similar to the stamp which I see on the letter shown to me (R. p. 63).

(Testimony of Kenneth N. Rackley.)

We call the mimeographed sheets in the file which I have described as the company's file on which annuities of various ages and dates are computed work sheets for that purpose (R. p. 64). The legend on a number of these sheets "Cost to purchase from Equitable" means, if we had a case where we purchased from Equitable, the cost would be in there (R. pp. 64-65). That is not the case in this. In this case, I presume these work sheets were in respect to Mr. Wolfe. I do not know. The initials on the work sheet are F.J.W. I would not assume that these work sheets were not with respect to Mr. Wolfe (R. p. 65).

The file contains a copy of a letter dated June 16, 1939, from J. W. Myers to Mr. F. J. Wolfe.

Thereupon said letter was offered and received in evidence and marked petitioner's Exhibit 3 (R. pp. 65-66). Said letter is as follows. [76]

June 16, 1939.

Personal & Confidential

Mr. F. J. Wolfe,
c/o Mr. G. H. Smith,
56 Church St.,
Toronto 2, Ontario,
Canada.

Dear Mr. Wolfe:

In accordance with your telephone conversation, I enclose memorandum prepared by Mr. Rackley, giving the amount of annuity per thousand pounds of salary for the five indicated dates.

(Testimony of Kenneth N. Rackley.)

Inasmuch as you will have earned your maximum annuity credits by the end of this year, a possible suspension of the present Anglo Plan as of the end of this year would not affect the figures shown in the attached statement. This would be true even if the final 5-year average contained in your present Plan were changed to present salary, as presumably your salary would not change in the event you elected to remain in service for another year or two. It would appear, therefore, that if you should remain in service under the new Plan any annuities of Thrift Plan credits obtained thereunder would be in addition to the amount shown on the attached statement. The problem of paying your annuity in dollars at this end has been left for future consideration.

A copy of this letter and enclosure are being sent to Mr. Pierce.

Sincerely yours,

J. W. MYERS,

JWM/ED

Encl.

cc Mr. F. W. Pierce [77]

(Testimony of Kenneth N. Rackley.)

Memorandum Re F. J. Wolfe

annual annuity per £1,000 of average annual salary applying:
Anglo discount rates to nearest one-half year of age interpolating where necessary.

U. S. absorption program.

U. S. program for adjusting age for discount purposes by taking into account service in excess of $37\frac{1}{2}$ years.

U. S. program in computing age to nearest one-half year.

Allowing full credit of 2% for each year of service.

Age	Age for discount purposes	Service	1/1/40	Annual Annuity Assuming Retirement				1/1/42
				7/1/40	1/1/41	7/1/41		
4 m.	60½ y.	37 y. 7 m.	£645	.....	.....	.....	.....	.....
10 m.	61½ y.	38 y. 1 m.	.....	£663	.....	.....	.....	.....
4 m.	62½ y.	38 y. 7 m.	.....	.....	£684	.....	.....	.....
10 m.	63½ y.	39 y. 1 m.	.....	.....	.....	£708	.....	.....
4 m.	64½ y.	39 y. 7 m.	.....	.....	.....	.....	.....	£735

R:HMC 6/16/39

(Testimony of Kenneth N. Rackley.)

The file contains a copy of a memorandum consisting of two sheets, dated June 21, 1939, from myself to Mr. Pierce (R. pp. 66-67).

Thereupon, said memorandum was offered and received in evidence and marked petitioner's Exhibit 4. Said letter is as follows:

MEMORANDUM

June 21, 1939.

Dear Mr. Pierce,

In submitting the attached memorandum in connection with the case of F. J. Wolfe, because of the sizeable amounts involved I think I should ask you whether you are interested in having a similar statement prepared showing the cost of the "excess," that is, the amount over \$20,000 annually, on a refund basis. This type of contract guarantees an annuity for the life of the annuitant and, in addition, provides that if at the death of the annuitant the guaranteed annuity payments made by the insurance company do not equal the consideration paid, the annuity payments will be continued to a beneficiary until the guaranteed return equals the consideration. The original outlay, of course, would be considerably higher, but you might want to consider it particularly if Mr. Wolfe is not in good health. So far as concerns the \$20,000 annual purchase under contract 255, any surplus resulting by death shortly after retirement would be reflected in dividends.

I do not think we should proceed on the definite

(Testimony of Kenneth N. Rackley.)

assumption that the purchase of such a large amount can be made from an insurance company. In so far as the Equitable is concerned, they have indicated that if they were asked to write such a contract at the present time they would have to think over the matter. There is the further point that if we are going the insurance company route you might wish to consider a non-par company, in which event the rates would be slightly less than those used in computing the capital value shown on the attached statement, but there would be no dividends to the annuitant. [79]

If the retirement goes through you might wish to give consideration to having the payments made from New York with a periodic billing to Anglo. It might turn out to be to the Company's benefit to handle the matter under such an arrangement if Mr. Wolfe is in poor health.

K. N. R.

KNR:HMC [80]

Memorandum Re Mr. F. J. Wolfe

Mr. F. W. Pierce:

The following is the information you asked me for in connection with the approximate capital value of Mr. Wolfe's annuity, for the various dates and amounts indicated in the attached memorandum of June 16, to Mr. Wolfe:

	Assuming retirement effective				
	1/1/40	7/1/40	1/1/41	7/1/41	1/1/42
Annual annuity in dollars converted on basis of rate of exchange 6/20/39 (\$4.68)	\$ 33,204	\$ 34,131	\$ 35,212	\$ 36,447	\$ 37,837
Cost to purchase \$20,000 annually under contract AC-255 (absorption contract)	267,715	263,732	259,749	255,766	251,783
Cost to purchase balance as individual participating life annuity (payments to commence month after purchase) —See note	192,745	203,433	215,940	230,175	246,341
Total cost.....	<u><u>\$460,460</u></u>	<u><u>\$467,165</u></u>	<u><u>\$475,689</u></u>	<u><u>\$485,941</u></u>	<u><u>\$498,124</u></u>

Note: Under the individual participating life annuity the annuitant would share in any dividends payable by the insurance company. The Equitable advises me that under present conditions the dividend at the end of the first year the contract is in effect would approximate $7\frac{1}{2}\%$ of the annual annuity; at the end of the second year, $8\frac{1}{2}\%$; third year, 8.6% ; fourth year, 8.7% ; and fifth year, 8.8% . To take the dividends into account in fixing the amount of the annuity it would be necessary to reduce the grant by about 7% .

K. N. R.

KNR:HMC

(Testimony of Kenneth N. Rackley.)

The file contains a copy of a letter dated January 9, 1940, from Mr. Pierce to Mr. Carder.

Thereupon, said letter was offered and received in evidence and marked petitioner's Exhibit 5 (R. pp. 67-68). Said letter is as follows.

Jan. 9, 1940.

Personal & Confidential

Mr. R. A. Carder,
Anglo-American Oil Co. Limited,
36 Queen Annes Gate,
London, S.W.1, England.

Dear Mr. Carder:

Final arrangements have been made, satisfactory to Mr. Wolfe, so that his retirement will become effective July 1, 1940. Although our formal setup for taking care of the annuity is not completed, we have undertaken to guarantee Mr. Wolfe that the money which you have provided, plus the additional amounts which Standard Oil Co. of New Jersey will be required to put up, will be used to assure him the annuity to which he is entitled, and there is no reason, therefore, why you should not formally record the transaction.

As suggested in your letter, we will arrange to debit the dollar equivalent of £1071 against any dollar credits which you may have in New York, and the accountants will send through to you the formal record in due course. We have cabled you concern-

(Testimony of Kenneth N. Rackley.)

ing the above, copy of which is attached. Thank you very much for your prompt action in this whole matter.

With best regards,

Yours very truly,

FWP:DA.

Enc.

The file contains a copy of a letter dated March 22, 1940, from Mr. Pierce to Mr. Carder. [82]

It was stipulated that said letter refers to the agreement of March 22, 1940.

Thereupon, said letter with pencil notations thereon was offered and received in evidence and marked petitioner's Exhibit 6 (R. p. 68). Said letter is as follows:

March 22, 1940.

Mr. R. A. Carder,

Anglo-American Oil Company Ltd.,
36 Queen Anne's Gate,
London, S.W.1, England.

Dear Mr. Carder:

Supplementing our letter of January 12th we now enclose three copies of an agreement of annuity settlement of today's date between Anglo, Jersey and Mr. Wolfe. All three copies have been duly executed by Jersey and Mr. Wolfe. We assume you will complete these three documents on behalf

(Testimony of Kenneth N. Rackley.)

of Anglo, retain one copy for your files and one for Mr. Wolfe and return the original to us for filing with the Secretary.

Mr. Wolfe will explain to you why it was necessary from our viewpoint to reword the agreement. We believe, nevertheless, that the revised agreement accomplishes the protection for Anglo which you sought in your draft of the agreement.

We also enclose Mr. Koechling's letter of March 22nd to you and debit memorandum in the amount of £1943 referred to therein. This additional charge of £1943 represents the difference between Anglo's initial contribution of £87,177 and a contribution of £89,120, the latter being the amount agreed upon with retirement effective July 1, 1940. This supplemental payment of £1943 supersedes the payment of £1071, which through inadvertence was mentioned in the second paragraph of our letter to you of January 9th.

Very truly yours,

F. W. PIERCE.

JWM.EB

Encl. [83]

(Pencil notations on foregoing letter:

Noted KNR

Letter released by JWM

C F U P (with 1 agreement)

3/26/40)

7/1/40

Has anyone been told to make payments

KNR

(Testimony of Kenneth N. Rackley.)

The file contains a copy of a letter dated December 11, 1940, from Mr. W. D. Barcus to Mr. R. L. B. Roessle. Mr. Barcus was then on the staff of the Treasurer's Department of Standard Oil Company of New Jersey. Mr. Roessle was in charge of the Overseas Personnel Office of Standard Oil Company of New Jersey.

Thereupon, said letter was offered and received in evidence and marked Petitioner's Exhibit 7 (R. p. 69). Said letter was as follows:

December 11, 1940.

Specimen Signature Card

.
Frederick John Wolfe

Mr. R. L. B. Roessle
Overseas Personnel Office
Building

Dear Sir:

So that our auditors may verify from time to time that Frederick John Wolfe, to whom we pay a special annuity, is alive, we would ask that you kindly secure a specimen of Mr. Wolfe's signature on the attached card and send it to this office. [84]

In view of the fact that the special annuity due Mr. Wolfe is payable to his present wife, Marguerite W. Wolfe, should she survive him, we think it ad-

(Testimony of Kenneth N. Rackley.)
visible to secure a specimen of her signature at this time. A card for this purpose is also attached.

Very truly yours,

TREASURER'S DEPARTMENT.
By W. D. BARCUS.

GG:LS

In dupl.

2 Encls.

The work sheets in the file are in the handwriting of one of the staff of Mr. Myer's office at that time. There are a number of these work sheets in the file, several of them. When a red "X" is over a sheet, that means that the arrangement we were talking about was out. Before the red X's were put on the sheets, they were made for a purpose of determining a figure,—not an actuarial basis (R. p. 70), to determine an amount of an annuity based on a certain set of facts as they appear on that particular work sheet (R. p. 71).

Thereupon, the following colloquy took place:

Q. And the fact is that the particular plan as represented by a particular work sheet was not carried into effect, as indicated by X, is that correct?

A. Oh, probably a different set of facts as we went along—perhaps, let me see if I can tell you what the difference was.

This assumed the date of retirement as September 1, 1940. (Indicating) This assumed the date

(Testimony of Kenneth N. Rackley.)

of retirement would be September 1, 1939, you see,

and you would [85] have a different calculation.

(Indicating) This one assumed the date of retirement July 1, 1941, and you have a different calculation.

(Indicating) This assumed January 1, 1941.

Apparently they were not sure when they were going to retire the man.

There is another one, July 1, 1940.

Q. All right, now assuming he was going to retire on July 1, 1940, what was the purpose of this work sheet, because that happens to be when he did retire.

Mr. Eckman: Your Honor, I object to the line of questioning concerning these work sheets, because the witness has already testified that this was not the scheme that was used for the retirement of the petitioner.

They were merely, if I may so characterize them, office scratch sheets which happened to be retained in the file, but they are clearly marked as absolutely of no effect whatsoever either in the calculations or in the computations for the subsequent retirement.

Mr. Wynn: If your Honor please, the fact is—that they show exactly how this department was worked before this contract was made, to arrive at the result they finally did arrive at.

The Court: Does it necessarily show that? It shows how they were working before, but how will I know that they did not change their plan in some degree, large or small, before the final result?

In other words, of what value is this to me? I want all the help I can get here, but of what value to me is this preliminary work sheet going to be?

Mr. Wynn: Frankly, your Honor, if I can state for the record my purpose in attempting to put these in, it is primarily to prove that according to these work sheets they did contemplate buying this annuity from an insurance company.

Now, with that explanation in the record I am not going to press the matter any further, because I do not want to consume the time of the Court. But that is my purpose.

The Court: I have the time. I am not pressed for time. [86]

Mr. Wynn: Well, that is my purpose in attempting to get one of these work sheets in as typical of the others, that they indicate that they were at that time contemplating buying his insurance policy—annuity policy from an insurance company.

The Court: Has the witness stated that?

Mr. Wynn: No, he has not stated that except in response to my questions, when I called his attention to the fact that if purchased from Equitable, the cost would be so much.

Mr. Eekman: Your Honor, we have here a written agreement which is already in evidence as part

of the stipulation of facts, which reflects the final method, plan and purpose of the requirement, and all these preliminary negotiations it seems to me are immaterial, besides which, why select two or three work sheets? There were probably any number of schemes that were thought about at one time, and I submit that it will only clutter the record and serve no purpose of help to your Honor, and certainly will not be relevant to the record.

The Court: I do not think that the preliminary work sheets will assist me.

Objection sustained.

Mr. Wynn: All right, I take an exception, your Honor.

The Court: Exception allowed. (R. pp. 71-74).

Thereupon, on Redirect Examination, the witness, Kenneth N. Rackley, testified.

The final annuity computation under which retirement pay was granted to petitioner had nothing to do with petitioner's exhibit 4 (R. pp. 74-75).

GEORGE S. KOCH

was called as a witness on behalf of the respondent, and being first duly sworn, testified as [87] follows on

Direct Examination

I am tax counsel for the Standard Oil Company and a member of the New York Bar. I have been employed as tax counsel for the Standard Oil Company of New Jersey since 1935. My duties, primarily, are to pass on such legal questions which

(Testimony of George S. Koch.)

arise under the various tax laws, Federal and State, which may arise with respect to company matters (R. p. 75).

I am familiar with the retirement payments which are made monthly to the petitioner (R. pp. 75-76). I have had nothing to do with the mechanical payment of the monthly sum to the petitioner, but I have been involved in the questions surrounding its payment, such as income tax matters. I am therefore familiar with the details surrounding the payments.

Thereupon, the following colloquy took place:

Q. Have you ever directed that any sum be withheld from the monthly payments made to Mr. Wolfe by Standard?

Mr. Wynn: Your Honor, I object to it as being immaterial to the issue in this case.

Mr. Eckman: Your Honor, the question bears on the materiality in this respect. Standard Oil is paying money. Standard Oil must account for the money in some manner and must have some intention as to what it is.

The Court: Objection overruled and exception allowed.

Will you read the previous question?

(Question read by the reporter.) [88]

A. I participated in the decision to make such withholdings.

Q. Were such sums withheld?

A. They were.

(Testimony of George S. Koch.)

Q. Why did you direct Standard to withhold those sums?

Mr. Wynn: If your Honor please, we are not interested in the legal opinion. I do not believe this Court needs the benefit of legal opinion. That is one of the questions for you to determine, sir.

The Court: Why are you asking him some legal proposition?

Mr. Eckman: Your Honor, I am not presuming to instruct the Court in matters of law, but I am trying to get the opinion of Standard Oil in withholding this money. Why did they do it? And this witness is qualified to answer the question.

Mr. Wynn: If your Honor please, I do not think that we are at all interested here in what the motives of Standard Oil Company may have been in withholding or not withholding in respect to Mr. Wolfe.

At best it would be no more than the opinion of the executives of Standard Oil, including Mr. Koch, as to what they should do for their own protection. It has nothing to do with the issue before this Court, but it is primarily a matter of opinion.

Mr. Eckman: But, your Honor, in any matter of this kind, where you are dealing with an employer and an employee, you can——

Mr. Wynn: If your Honor please, I object to the characterization of Mr. Wolfe as an employee. That has not been proved.

Mr. Eckman: All right, the employee of a wholly-owned subsidiary, if you like. It is, I submit, the same thing for practical purposes and taxation is a practical matter.

(Testimony of George S. Koch.)

The Court: Let us not get into an argument about that. This gets very close to asking this gentleman to give legal advice, but I can see how the matter of motives of the plan may possibly affect this. The objection is overruled; exception allowed.

Q. (By Mr. Eckman): Why did you direct Standard to withhold those sums?

A. Well, the statute on withholding dealt with the question of wages, and wages only, and the regulations provided that pensions and retirement income were treated as wages.

That was the basis on which the decision was made. (R. pp. 76-78)

Thereupon, on Cross-Examination, the witness, George S. Koch, testified:

I have given my opinion. I have stated why I directed these withholdings. In doing so I have expressed my legal opinion as a lawyer. Assuredly, it was certainly my duty to protect Standard Oil Company of New Jersey. Any doubts would have been resolved in favor of Standard Oil Company of New Jersey (R. p. 79). I don't necessarily believe I had any doubts, at least when the decision was made. Frankly, I have had doubt. I was simply advising my client, my employer, to do whichever way the cat jumped, they were going to be protected (R. p. 80).

Thereupon, the respondent Rested.

Thereupon, the petitioner Closed.

[Endorsed]: Filed Aug. 11, 1947. [90]

[Title of Tax Court and Cause.]

PETITIONER'S DESIGNATION OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON THE REVIEW BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT OF THE DECISION IN THIS PROCEEDING OF THE TAX COURT OF THE UNITED STATES

To the Clerk of the Tax Court of the United States:

You will please transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit a typewritten copy of the record on the review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision in this proceeding by the Tax Court of the United States. The petitioner hereby designates the portions of the record, proceedings and evidence to be contained in said record on appeal as follows:

1. The docket entries of all proceedings before the Tax Court of the United States.
2. Pleadings before the Tax Court of the United States as follows: [91]
 - (a) The Petition
 - (b) The Answer
3. The statement of evidence, a copy of which is annexed hereto.
4. The findings of fact and opinion of the Tax Court of the United States.

5. The decision of the Tax Court of the United States.
6. The petition for review.
7. Proof of service of the petition for review, with notice thereof, upon the respondent.
8. Petitioner's statement of points, a copy of which is annexed hereto.
9. This the petitioner's designation of the portions of the record, proceedings and evidence to be contained in the record on the review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision in this proceeding by the Tax Court of the United States.

10. Proof of service upon the respondent of this petitioner's designation of the contents of the record, proceedings and evidence to be contained in the record on the review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision in this proceeding of the Tax Court of the United States.

/s/ WILLIAM GALBALLY, JR.,
Attorney for Petitioner.

Personal service of a copy of the foregoing designation is hereby acknowledged this 31st day of July, 1947.

/s/ CHARLES OLIPHANT, CAR
Acting Chief Counsel, Bureau
of Internal Revenue.

[Endorsed]: Filed July 31, 1947. [92]

[Title of Tax Court and Cause.]

CERTIFICATE

I, Robert C. Tracy, acting clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 92, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeclipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 20th day of August, 1947.

[Seal] /s/ ROBERT C. TRACY,
EMT

Acting Clerk, The Tax Court
of the United States.

[Endorsed]: No. 11713. United States Circuit Court of Appeals for the Ninth Circuit. Frederick John Wolfe, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed August 25, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

